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IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted]169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation,

Petitioner,

v.

STATE OF ALABAMA *ex rel.* RICHMOND M. FLOWERS, Attorney General of the State of Alabama.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statement	2
A. Prior Proceedings	2
B. Evidence Presented in the Circuit Court of Montgomery County, and Subsequent Proceedings	6
Reasons for Allowance of Writ	11
Conclusion	21
Appendices:	
A—Opinion, Supreme Court of Alabama, February 28, 1963	1a
B—Brief Filed by Petitioner in the Supreme Court of Alabama	11a
C—Decree of Circuit Court of Montgomery, Alabama, December 29, 1961	44a
D—Motion for Hearing on the Merits in the United States District Court for the Middle District of Alabama Northern Division	48a
E—Denial of Motion for Hearing on Merits	51a

Table of Cases Cited

American Communications Ass'n v. Douds, 339 U. S. 382	18
Baltimore & Ohio Railroad Co. v. United States, 298 U. S. 349	18
Bates v. Little Rock, 361 U. S. 516	18
Bell v. Fulgham, 202 Ala. 217, 89 So. 39 (1918)	14

PAGE

Birmingham Electric v. Alabama Public Service Commission, 37 So. 2d 455 (1949) 15
Blackburn v. Alabama, 361 U. S. 199 18
Bolton v. Barnett Lumber Supply Co., 267 Ala. 74, 100 So. 2d 9 (1958) 13
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673 ..... 11, 12, 15
Bransford v. Glennon, 216 Ala. 72, 112 So. 341 (1927) 14
Board of Education of Colbert County v. Mitchell, 270 Ala. 594, 121 So. 2d 103 (1960) 14
Broad River Power Co. ex rel. Daniel, 286 U. S. 276 12
Brooks v. Everett, 271 Ala. 380, 124 So. 2d 100 (1960) 14
Brothers v. Brothers, 94 So. 175 (1922) 14

Cantwell v. Connecticut, 310 U. S. 296 20
Christian v. Fidelity and Casualty Co. of New York, 264 Ala. 616, 88 So. 2d 840 (1956) 14, 15
City of Montgomery v. Mott, 266 Ala. 422, 96 So. 2d 766 (1957) 14

Davis v. Wechsler, 263 U. S. 22 11
Dewey v. Des Moines, 173 U. S. 193 18
Dorchy v. Kansas, 272 U. S. 306 17

Edge v. Bice, 262 Ala. 273, 82 So. 2d 252 (1955) 14
Erie R. Co. v. Purdy, 185 U. S. 148 18

Feiner v. New York, 340 U. S. 315 18

Gayle v. Browder, 252 U. S. 903 19
Guy v. Lancaster, 250 Ala. 287, 290, 34 So. 2d 499 (1948) 14

Hartford Fire Insurance Co. v. Clark, 258 Ala. 141, 61 So. 2d 19 (1952) 15
Hooven & Allison Co. v. Evatt, 324 U. S. 652 18

Kendall Alabama Co. v. City of Fort Payne, 79 So. 2d 801 (1955) 14

Lawrence v. State Tax Commission of Mississippi, 286 U. S. 276 ..... 12, 17

PAGE

Madison Limestone Co. v. McDonald, 264 Ala. 295, 87 So. 2d 539 (1956) 13
Muir v. Louisville Park Theatrical Assn., 102 F. Supp. 525 (W. D. Ky. 1951), aff'd, 202 F. 2d 275 (6th Cir. 1953), vacated and remanded, 344 U. S. 971 18

NAACP v. Alabama, 357 U. S. 449 ..... 5, 15, 20
NAACP v. Button, 371 U. S. 415 ..... 19, 20
NAACP v. Louisiana, 366 U. S. 293 18
Napue v. Illinois, 360 U. S. 264 18
Niemotko v. Maryland, 340 U. S. 268 18
Norris v. Alabama, 294 U. S. 587 18
New York Central v. New York and Penn. Co., 271 U. S. 124 12

Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287 18

Pak-a-Sak of Alabama, Inc. v. Lauten, 271 Ala. 276, 123 So. 2d 122 (1960) 14
Palko v. Connecticut, 302 U. S. 319 20
Pierre v. Louisiana, 306 U. S. 354 18

Quinn v. Hannow, 80 So. 2d 239 (1955) 14

Roby v. Colehour, 146 U. S. 153 18
Rogers v. Alabama, 192 U. S. 266 12

St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 18
Shelby County v. Baker, 269 Ala. 111, 110 So. 2d 896 (1959) 13
Shelton v. Tucker, 364 U. S. 479 18
Simmons v. Cochran, 252 Ala. 461, 41 So. 2d 579, 580 (1949) 14
Spano v. New York, 360 U. S. 315 18
Stariha v. Hagood, 252 Ala. 158, 40 So. 2d 85 (1949) 14
State v. Farabee, 268 Ala. 437, 108 So. 2d 148 (1959) 14
Staub v. City of Baxley, 355 U. S. 313 20
Styles v. Lampert, 94 So. 2d 784 (1957) 15

PAGE

Thompson v. State, 267 Ala. 22, 99 So. 2d 198 (1957) . 13

United States v. Rumely, 345 U. S. 41 18
Urie v. Thompson, 337 U. S. 163 12

Watts v. Indiana, 338 U. S. 49 18
Ward v. Love County, 253 U. S. 17 12
Williams v. Georgia, 349 U. S. 375 12
Wright v. Georgia, — U. S. —, 31 L. W. 4487 ..... 15, 19
Wood v. Wood, 82 So. 2d 556 (1955) 14

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v.

STATE OF ALABAMA, *ex rel.* RICHMOND M. FLOWERS, Attorney General of Alabama.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on February 28, 1963, in the above-entitled cause.

Opinion Below

The opinion of the Supreme Court of Alabama is not reported and is printed as Appendix A, *infra* at page 1a. The decree of the Circuit Court of Montgomery County entered on December 29, 1961, permanently ousting petitioner from the State, is printed in Appendix C, *infra* at page 44a.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on February 28, 1963 (R. 1052-1065). Jurisdiction of this Court is invoked under Title 28, United States Code,

Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States.

Question Presented

Whether petitioner, whose basic purpose is the elimination of racial discrimination throughout the United States through peaceful and lawful means, has been deprived of freedom of association, due process, and equal protection of the laws guaranteed in the First and Fourteenth Amendments of the Constitution of the United States, by the judgment of the Supreme Court of Alabama affirming the decision of the Circuit Court of Montgomery County permanently ousting petitioner from the State?

Statement

A. Prior Proceedings

Petitioner, a New York non-profit membership corporation, is engaged in attempting through lawful and peaceful activity to eliminate racial discrimination as a pattern of American life. Petitioner's chartered affiliates, designated as branches, have been active in Alabama since 1918, and prior to June 1, 1956, its Southeast Regional Office was located in Birmingham (R. 168). Petitioner sponsored activities throughout the State through this office, its affiliates and members, financed in part from the dues and contributions of citizens and residents of Alabama.

On June 1, 1956, the State filed a bill of complaint in the Circuit Court of the Fifteenth Judicial Circuit of Alabama. The complaint alleged that petitioner was maintaining its Southeast Regional Office in Birmingham, Alabama, and had organized local chapters in the State of

Alabama; had employed or paid Autherine Lucy and Polly Myers Hudson to encourage them to enroll as students at the University of Alabama; had furnished legal counsel to Autherine Lucy in her proceedings against the State University; had engaged in organizing and supporting illegal bus boycotts conducted by the residents of Montgomery, Alabama; and had failed to file its Articles of Incorporation and designate an authorized agent to receive service pursuant to Title 10, Sections 192, 193, and 194, Code of Alabama, 1940 and Article XII, Section 232 of the Constitution of Alabama; and that by these acts had done irreparable injury to the State. It was prayed that the petitioner be permanently ousted (R. 2-5).

On the same day, without notice or hearing, the circuit court entered *ex parte* a temporary restraining order and injunction which in effect ousted petitioner from the State and barred it from complying with the Alabama law requiring foreign corporations to register with the Secretary of State (R. 18).

Petitioner filed a motion to dissolve the injunction (R. 22, 23) and demurrers to the complaint (R. 27). On July 11, pursuant to a motion of the Attorney General, the court entered an interlocutory order requiring the petitioner to produce, among other things, the names and addresses of all of its members in the State (R. 31, 32).

Petitioner moved to set aside and vacate this order (R. 39), and at the same time filed its answer (R. 32-39) in which it admitted that it had not complied with the requirements of Sections 192-194, Title 10, Code of Alabama, 1940, and Article XII, Section 232 of the Constitution of the State. It denied that it had employed or paid money to Autherine Lucy or Polly Myers Hudson, but admitted that it had furnished counsel for Autherine Lucy in her controversy with the University of Alabama; and that it had provided moral and financial support

to the Negro residents of Montgomery in connection with their refusal to use the public transportation system, but denied that the boycott was illegal and all other allegations and inferences in the bill of complaint in respect to that matter.

Petitioner pointed out that it has a non-profit character and that its principal purposes and objects were to improve the status of Negroes in American life; that its branches were independent, unincorporated associations, holding charters permitting them to use petitioner's name; that it did no business in the State within the meaning of the Constitution and laws of Alabama; and that its activities exempted it from any requirements of registering as an out-of-state corporation under Title 10, Section 198, Code of Alabama, 1940. Moreover, petitioner alleged laches as a defense in view of the fact that N.A.A.C.P. branches had been in operation in Alabama since 1918; that the organization had been furnishing counsel and legal assistance to Negroes seeking vindication of their constitutional rights in Alabama since 1932; that it had opened its Southeast Regional Office in Birmingham in April of 1951, and had operated the same, openly and continuously since that time; that the State and the Attorney General's office were well aware of petitioner's existence in Alabama and that despite these undeniable facts, at no time did the State give notice to petitioner that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register; and that as a matter of fact, the Attorney General had recently been in correspondence with petitioner, and had at no time called upon petitioner to register, prior to seeking an *ex parte* injunction ousting it from the State.

Although petitioner alleged that it did not feel the necessity to register, it offered to do so, to waive its rights

in this regard and attached a copy of the forms filled out, requesting the court's permission to file them. Such permission was refused.

Because of petitioner's failure to comply with the interlocutory order requiring the disclosure of the names and addresses of its members to the Attorney General, it was adjudged in contempt (R. 41, 73). In due course this Court reversed the contempt decree. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449.

Prior to the final decision in that case, a second contempt proceeding was commenced by the State on April 19, 1958 (R. 77-81). The basis of the allegation of contempt, upon which evidence was presented in a June 1958 hearing, was that petitioner had continued to do business in the State under the name of the Alabama State Co-ordinating Association in violation of the temporary restraining order and injunction (R. 205-316). These charges were based entirely upon "information and belief", and petitioner introduced testimony that it had no record of any correspondence between the N.A.A.C.P. and the Alabama State Co-ordinating Association (R. 293, 296, 312). In this proceeding, a motion was made for disqualification of the presiding judge. In support thereof, newspaper clippings were presented containing a statement made by the judge or on his behalf, which showed bias and prejudice toward the petitioner (R. 218-227, 229-249). Witnesses testified that the judge had appeared on television on May 5, 1958, and announced that he intended to give the N.A.A.C.P. a blow from which it would never recover (R. 250-251). The judge admitted that he believed the N.A.A.C.P. to be Communist dominated (R. 272). He refused to recuse himself (R. 281), and the proceedings were continued without final disposition.

In acting on the mandate of this Court in *N.A.A.C.P.* v. *Alabama*, *supra*, the Supreme Court of Alabama held that

petitioner had not complied with orders of the trial court other than that requiring disclosure of its membership list and, therefore, was still in contempt. Thereupon, it again affirmed the original contempt adjudication (268 Ala. 531). Its judgment was reversed by this Court for a second time (360 U. S. 240). On remand, the Supreme Court of Alabama failed to act on the mandate of this Court, and after vainly seeking a hearing on the merits, petitioner, on June 23, 1960, began proceedings in the United States District Court for the Middle District of Alabama (R. 546-626). This Court, on October 23, 1961, ordered the federal court to proceed to a trial of the issues involved unless the State of Alabama had provided petitioner with a hearing on the merits by January 2, 1962. Pursuant thereto, a hearing was set down in the Circuit Court of Montgomery County for December 27, 1961.

B. Evidence Presented in the Circuit Court of Montgomery County and Subsequent Proceedings

On December 11, 1961, respondent filed an amendment to its complaint (R. 135-136). On the 27th of December, 1961, the original complaint was further amended in respect to paragraph 9 by placing a period after the word "race" and striking the remainder of the paragraph (R. 151).

The hearing on the merits took place on December 27, 28, and 29, 1961 (R. 336-746). At the beginning of the hearing, counsel for petitioner observed that spectators were compelled to seat themselves on a segregated basis, and moved that the court permit all persons to be seated in the courtroom without regard to race or color. This motion was denied (R. 337), as was a motion that Negro witnesses and attorneys be referred to by the same courtesy titles as white witnesses and attorneys (R. 337-338).

The State introduced into evidence answers to interrogatories (R. 118) it had propounded on the subject of

petitioner's activities in Alabama; these answers indicated that the petitioner maintained no offices and had engaged in no activities in Alabama since June 1, 1956 (R. 131, 363-384).

The court received into evidence over petitioner's objections an attested copy of the opinion, conclusion and findings of fact of Judge Grooms in the case of *Autherine J. Lucy* v. *William F. Adams*, (R. 394-410). This opinion found that Miss Lucy had made certain false charges against the officials of the University of Alabama. The N.A.A.C.P. contended that furnishing counsel for Miss Lucy in her efforts to be admitted to the University of Alabama could not be illegal, since her right to go to the University had been vindicated by the federal courts (R. 357).

The court also received into evidence the judgment and sentence in the case of *State of Alabama* v. *M. L. King, Jr.* (R. 630-636). This case involved the conviction of Martin Luther King for conducting a boycott of segregated buses in Montgomery in an effort to secure the equal treatment of Negro passengers. Petitioner argued that there was no illegality in its moral and financial support of this effort, since the federal courts had vindicated in many decisions the right of Negro citizens to use public transportation facilities without racial discrimination (R. 357).

Testimony was then presented concerning the activities of the Alabama State Co-ordinating Association for Registration and Voting, in an attempt to show that this organization was connected with the N.A.A.C.P., and that petitioner, therefore, had been operating in the State after June 1, 1956, in violation of the court's injunction. One witness testified that an official of the Alabama State Co-ordinating Association attended a meeting in Georgia which was also attended by Roy Wilkins, Executive Secretary of the N.A.A.C.P. On cross-examination, he said that this was a meeting of representatives from various southern states and organizations concerning voter registration throughout

the South. The witness examined photographs of persons attending the meeting and erroneously identified some of them (R. 426-428). W. C. Patton, an official of the Alabama State Co-ordinating Association and a field representative for petitioner in the State of Alabama prior to 1956, testified that the Alabama State Co-ordinating Association was separate and distinct from the N.A.A.C.P. and that there was no connection between the two. He admitted that he occasionally spoke to Roy Wilkins on the telephone. He stated that he had transacted no business whatever for petitioner in the State of Alabama since June 1, 1956 (R. 448-456).

W. M. Eagerton, North Alabama Public Relations Manager for the Southern Bell Telephone Company, identified an unlisted telephone number as being that of W. C. Patton, and testified over petitioner's objections to telephone calls made from this number to persons residing within and without the State of Alabama (R. 456). On cross-examination, he said that he was not the custodian of the records of Southern Bell Telephone Company and that the subpoena for his appearance in court was directed to him and not to the Southern Bell Telephone Company. He also testified that the office of the Attorney General of Alabama had prior knowledge of the existence of these telephone calls. He further stated that he was the son of Ralph T. Eagerton, Sr. The court refused to permit petitioner to show that the witness' father and brother were employed by the State of Alabama (R. 516).

The Mayor of Tuskegee, Alabama, testified that he had received copies of the N.A.A.C.P. News printed by petitioner's Tuskegee Branch; those copies introduced into evidence were dated November 21, 1954 and November 28, 1954. On cross-examination the witness testified that to the best of his recollection he has not received a copy of any such pamphlet since June 1, 1956.

The first witness for petitioner was its Executive Secretary. He stated the objectives and purposes of the organization (R. 674); that in 1956 the former Attorney General of the State, John Patterson, had requested certain information which was immediately sent to him; and that petitioner had received no notice informing it that it was required to register. He also testified that petitioner had conducted no business of any kind and had maintained no office and solicited no memberships or funds within the State of Alabama since June 1, 1956 (R. 673-692).

Petitioner then called various state officials to show that during their tenure of office they had no personal knowledge of, nor did their records reflect, any action ever being commenced by the Attorney General of the State of Alabama against any other respondent similar to the action being brought against petitioner (693-701). Petitioner also called Mrs. Bettye Frink, then Secretary of State of Alabama; she testified that she issued a statement which appeared in the Alabama Journal which was derogatory towards petitioner and indicated a hostile attitude towards petitioner by the State of Alabama (R. 701-702). The chief of the Franchise Tax Division stated that his office had received a letter from the nonprofit First Manassas Corporation (R. 709) inquiring about qualifying to do business in the State. On October 4, 1960, a letter was sent to that organization informing the corporation that "your organization is exempt from qualifying in Alabama as a foreign corporation" (R. 712).

Other witnesses then testified that the Alabama State Co-ordinating Association was founded in 1952 before petitioner was ousted from the State and that it continued to exist up to the present time, and that it had no connection with petitioner (R. 729-746).

On December 29, 1961, the court entered a final decree in which it permanently restrained and enjoined the petitioner from conducting any business of any kind within the

State, from soliciting members, soliciting contributions or collecting membership dues or contributions and from filing with the Department of Revenue and Secretary of State any application or document for the purpose of qualifying to do business (R. 1041-1043). In sum, its *ex parte* temporary injunction, which had been in effect since June 1, 1956, was made permanent.

The petitioner filed a motion for rehearing on January 8, 1962 (R. 1044-1047). The motion was denied on January 12, 1962 (R. 1047). On January 22, 1962, petitioner filed a notice of appeal to the Supreme Court of Alabama (R. 1048-1050), and on March 19, 1962, the record in the cause was filed, along with the petitioner's assignment of errors (R. 1066-1070).

Petitioner's brief was filed in the Supreme Court of Alabama on April 27, 1962 (Appendix B, p. 11a). The case was argued on December 18, 1962 (R. 1052). The Supreme Court of Alabama rendered its decision in the above matter on February 28, 1963, affirming the decree of the Circuit Court of Montgomery County, permanently enjoining and restraining the petitioner from conducting business in Alabama and ousting petitioner from the State (R. 1052-1065). The court stated that: "This appeal requires an affirmance of the decree of the lower court without a consideration of the merits of the case . . . Supreme Court Rule 9, requires in subsection (d), that the argument section of an appellant's brief contain 'argument with respect to errors assigned which counsel desire to insist upon.' The rule plainly states that assignments of error are to be argued in the argument section of a brief" (R. 1054). The court held that this rule means that when assignments of error are argued "in bulk" and one assignment is without merit, the court is precluded from considering those argued with it "in bulk." The court then ruled that petitioner had violated this rule and that it, therefore, could not consider the appeal on its merits (R. 1062).

On April 1, 1963, petitioner filed a motion in the United States District Court for the Middle District of Alabama, asking that court to set the cause down for hearing on the merits, as mandated by this Court on October 23, 1961, since the Alabama Supreme Court had refused to base its final determination on the merits (Appendix D, p. 48a). Petitioner argued in its motion that its brief had not violated any procedural rule of the State of Alabama; that at no time prior to or during the hearing before the Supreme Court of Alabama was there any statement from court or counsel that the brief or appeal was jurisdictionally defective; and that the action of the Supreme Court of Alabama was in defiance of this Court's order and mandate of October 23, 1961 (Appendix D, p. 48a).

On April 30, 1963, the United States District Court denied the petitioner's motion for a hearing on the merits, holding: "Such action by this Court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff says was 'a clear denial of due process.' The Supreme Court of the United States is the proper court to review this action by the Supreme Court of Alabama" (Appendix E, p. 51a).

Whereupon, petitioner brings the cause here, seeking a review by this Court of the judgment and decree of the Supreme Court of Alabama.

Reasons for Allowance of Writ

1. The judgment below, affirming a permanent injunction which ousts petitioner from the State of Alabama, is reviewable by this Court, since "[w]hatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis* v. *Wechsler*, 263 U. S. 22, 24; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281

U. S. 673, 682; *Rogers* v. *Alabama*, 192 U. S. 266; *Williams* v. *Georgia*, 349 U. S. 375; *Urie* v. *Thompson*, 337 U. S. 163; *Lawrence* v. *State Tax Commission of Mississippi*, 286 U. S. 276, 282; *Broad River Power Company ex rel. Daniel*, 281 U. S. 537; *New York Central* v. *New York and Penn. Co.*, 271 U. S. 124; *Ward* v. *Love County*, 253 U. S. 17. The decision of the Supreme Court of Alabama purports to be based not upon the issues in the case, but upon an alleged violation by petitioner of Rule 9(d) of the Rules of the Supreme Court of Alabama. This rule specifies that appellant's brief shall contain "argument with respect to errors assigned which counsel desire to insist upon." The court's interpretation of this rule was that when assignments of error are argued "in bulk" and one assignment is without merit, the court is precluded from considering others argued with it "in bulk."

The court's finding that petitioner violated Rule 9(d) was never raised either in the briefs of the State of Alabama or at the time of oral argument in this case. The court is now apparently taking the position that assignments of error are argued "in bulk" if they are argued under the same section or subsection heading, regardless of the separation of the argument by paragraphs or otherwise. No authority whatever and no language in the rules is offered to show that each assignment of error must appear in a different subsection. It would be difficult for the court to claim that this novel interpretation has been evolved to aid it in dealing with the issues in this case, since it would clearly be burdensome to the court to group the arguments under numerous separate and distinct headings when fewer headings are sufficient to deal with the arguments raised in the errors assigned. An examination of petitioner's brief (Appendix B, *infra*, p. 11a) will show that the court's contention that the assignments of error were argued "in bulk" is strained and arbitrary.

Moreover, the court's application of this rule is not even in accord with its own precedents. The refusal to consider the merits of this case was based not upon an exercise of discretion, but upon a finding by the court that it was required by the authority cited to reject such considerations and affirm the judgment of the court below:

"This appeal *requires* an affirmance of the decree of the lower court without a consideration of the merits of the case." (Emphasis added) (Appendix A, *infra* at p. 1a). An examination of the very authorities which the court cites for this disposition will show its invalidity. The court cites *Bolton* v. *Barnett Lumber Supply Co.*, 267 Ala. 74, 100 So. 2d 9 (1958), as authority for the proposition that where several assignments of error are grouped together and argued in a brief, the court will not consider the others if one is found to be without merit. What that case actually held was:

> We see no reason why there should be any real difficulty in complying with these rules. However, we have held that they are directory and if appellants' brief, even though not in compliance with the rule, fairly and helpfully makes the points upon which appellants rely, this court may in its discretion consider it.

The court proceeded to consider the cause on its merits.

The case of *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198, 200 (1957), also cited by the court, again illustrates how this rule is applied, for after stating that unrelated assignments of error should not be argued together, the court says: "However, we feel justified in saying that we have examined the evidence and it is ample to support the decree." The court then proceeded to examine each assignment of error on its merits. The same was done in *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539 (1956).

Also cited was *Shelby County* v. *Baker*, 269 Ala. 111, 110 So. 2d 896 (1959), where the court said that some of

the assignments of error were somewhat kindred and therefore considered them on their merits.

The court correctly cites *Pak-a-Sak of Alabama, Inc.* v. *Lauten*, 271 Ala. 276, 123 So. 2d 122 (1960), as an example of its refusal to consider an appeal on its merits. However, there is no resemblance between the facts in the instant case and those in *Pak-a-Sak* where it was noted at page 125 that "if appellants' brief can be said to contain an argument of any assignment of error it must be construed as arguing all of the assignments of error in bulk, as there is no reference in appellants' brief to any of the fourteen assignments of error." Similar are *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341 (1927), and *Board of Education of Colbert County* v. *Mitchell*, 270 Ala. 594, 121 So. 2d 103 (1960).

Not cited but very much in point are many other cases including *Guy* v. *Lancaster*, 250 Ala. 287, 290, 34 So. 2d 499, 502 (1948), where the court considered a brief with eighty assignments of error, not one of which was specifically argued with supporting authorities. The court stated, citing several cases, that its rule should be construed liberally. See also *Edge* v. *Bice*, 262 Ala. 273, 82 So. 2d 252, 254 (1955); *Simmons* v. *Cochran*, 252 Ala. 461, 41 So. 2d 579, 580 (1949); *Christian* v. *Fidelity and Casualty Co. of New York*, 264 Ala. 616, 88 So. 2d 840 (1956); *Brothers* v. *Brothers*, 94 So. 175 (1922); *Wood* v. *Wood*, 82 So. 2d 556 (1955); *Quinn* v. *Hannow*, 80 So. 2d 239 (1955); *Bell* v. *Fulgham*, 202 Ala. 217, 80 So. 39 (1918); *Stariha* v. *Hagood*, 40 So. 2d 85 (1949); *Kendall Alabama Co.* v. *City of Fort Payne*, 79 So. 2d 801 (1955); *City of Montgomery* v. *Mott*, 266 Ala. 422, 96 So. 2d 766 (1957); *State* v. *Farabee*, 268 Ala. 437, 108 So. 2d 148 (1959); *Brooks* v. *Everett*, 271 Ala. 380, 124 So. 2d 100 (1960).

In actuality, petitioner's brief in the instant case was more explicit than precedent required since, under Alabama law, when a decree which is a unit and not severable is

erroneous, the error permeates the entire unit and an assignment of errors in general terms is sufficient. *Birmingham Electric* v. *Alabama Public Service Commission*, 47 So. 2d 455 (1949); *Styles* v. *Lampert*, 94 So. 2d 784 (1957). The latter case also stands for the proposition that where a common thread runs through some of appellant's claimed errors, the court could review within the scope of the common point. This rationale was also followed in *Hartford Fire Insurance Co.* v. *Clark*, 258 Ala. 141, 61 So. 2d 19 (1952), and *Christian* v. *Fidelity and Casualty Co. of New York, supra*, in which the propositions of law cited in the brief were never referred back to any particular assignment of errors.

In view of the many cases cited above, the court's statement that: "This court has one set of rules for all litigants, and all are treated alike, regardless of whom [sic] they may be" has no validity.

The decision below in the instant case is clearly another obvious procedural device designed to prevent a review of the merits of the judgment of ouster against petitioner. Such a device is impermissible under the decision of this Court in *NAACP* v. *Alabama, supra* at 457, in which it was held: "Novelty in procedural requirements cannot be permitted to thwart review in this court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights. Cf. *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673." See also *Wright* v. *Georgia*, — U. S. —, 31 L. W. 4487. The petitioner has been forced to seek redress in this Court on three occasions since the issuance of the "temporary" restraining order in 1956. In the first two instances, the State had attempted to use a contempt judgment as a procedural barrier to a hearing on the merits; in the third instance, the Supreme Court of Alabama failed to act on the mandate of this Court.

The triviality of the points raised by the court below as a reason for barring consideration on the merits would,

even if applicable to petitioner, raise serious questions of due process which would require review and settlement by this Court. If a brief which clearly points to manifest error in the trial below can be ignored because of the grouping of its points or other trifling matters of form, the litigant may in effect be deprived of the right of appeal. Clearly, the opportunity to appeal an erroneous judgment is an essential element of the due process guaranteed in the Fourteenth Amendment of the Constitution of the United States.

2. The action of the Supreme Court of Alabama in improperly refusing to review the judgment of ouster against petitioner, in effect, constitutes a defiance of the mandate of this Court of October 23, 1961:

> The petition for a writ of certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. *Truax* v. *Corrigan*, 257 U. S. 312, 331-334.

Petitioner has been barred from Alabama without notice or hearing since 1956 under an *ex parte* injunction (R. 18). The State refused to accord a hearing on the merits until this Court issued its order of October 23, 1961, which directed a hearing on the merits in the federal court unless the State acted. A hearing on the merits took place five and a half years after the *ex parte* injunction was granted, and only because of the threat implied in this

Court's October 23, 1961, order. After that hearing, the trial court made the temporary injunction permanent (Appendix C, *infra*, p. 44a). Petitioner sought a review of this judgment, claiming grave errors in the conduct of the trial and the judgment of the trial court (R. 1066-1070), but review on the merits by the Supreme Court of Alabama was refused.

In denying petitioner's motion to grant a hearing on the merits, the United States District Court stated:

> Such action by this court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff says was "a clear denial of due process." The Supreme Court of the United States is the proper court to review this action by the Supreme Court of Alabama (Appendix E, p. 51a).

While petitioner believes such jurisdiction exists, pursuant to this Court's October 23, 1961, decree, petitioner respectfully submits that justice demands that these proceedings be finally and conclusively determined. Such a final determination could be made by this Court on the present record before it on this petition.

A trial in the United States District Court would necessitate another presentation of the same evidence which constitutes the record in the Circuit Court of Montgomery County. More importantly, there would be further delay in final adjudication of petitioner's right to maintain an organizational structure in Alabama. This would further compound the injustice and denial of due process to which petitioner has already been subjected.

The record, which is now before this Court, contains all exhibits and testimony adduced by the State in support of its complaint for injunction, and the evidence presented by petitioner that its activities were at all times lawful. A decision ousting petitioner from the State was made in the trial court; since the Supreme Court of Ala-

bama, without examining the evidence, affirmed the decree of ouster, it was in effect deciding that no federal constitutional guarantee had been violated. Federal rights may be denied by the refusal of a state court to decide questions. *Lawrence* v. *Mississippi*, *supra*; *Dorchy* v. *Kansas*, 272 U. S. 306, 308-309; *Erie R. Co.* v. *Purdy*, 185 U. S. 148, 154; *Dewey* v. *Des Moines*, 173 U. S. 193, 199; *Roby* v. *Colehour*, 146 U. S. 153, 159-160.

The decision of the Supreme Court of Alabama confers jurisdiction on this Court. Under the circumstances of this case, due process requirements would be best served by a final determination on the merits by this Court based upon its own examination of the evidence in this cause. Cf. *Blackburn* v. *Alabama*, 361 U. S. 199; *Spano* v. *New York*, 360 U. S. 315; *Napue* v. *Illinois*, 360 U. S. 264; *Muir* v. *Louisville Park Theatrical Association*, 102 F. Supp. 525 (W. D. Ky. 1951), aff'd, 202 F. 2d 275 (C. A. 6, 1953), vacated and remanded, 344 U. S. 971; *Niemotko* v. *Maryland*, 340 U. S. 268, 271; *Feiner* v. *New York*, 340 U. S. 315, 316, 322, fn. 4; *Watts* v. *Indiana*, 338 U. S. 49, 50-51; *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Baltimore & Ohio Railroad Company* v. *United States*, 298 U. S. 349, 372; *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38, 49-55; *Norris* v. *Alabama*, 294 U. S. 587, 589, 590; *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U. S. 287.

3. The decision below is in conflict with prior decisions of this Court, which have recognized that freedom of association is protected against "regulatory measures which, no matter how sophisticated, cannot be employed in purpose or effect to stifle, penalize or curb the exercise of First Amendment rights." *NAACP* v. *Louisiana*, 366 U. S. 293, 296; *American Communications Ass'n* v. *Douds*, 339 U. S. 382; *United States* v. *Rumely*, 345 U. S. 41; *Shelton* v. *Tucker*, 364 U. S. 479; *Bates* v. *Little Rock*, 361 U. S. 516.

The Supreme Court of Alabama is attempting in the instant case to accomplish by indirection what it cannot do directly. There was no evidence that petitioner had violated the injunction barring it from the State, nor was any evidence adduced to show that petitioner had advocated or utilized any other than lawful means to secure its objective of obtaining equal citizenship rights for Negroes. The evidence that Martin Luther King was convicted of engaging in an illegal boycott to which petitioner gave moral and financial support, does not form a basis for or justify the injunction against petitioner; the purpose of the boycott was to integrate the buses in Montgomery. The right of Negro citizens to travel on buses on a non-segregated basis has been established by law, *Gayle* v. *Browder*, 352 U. S. 903, and hence petitioner's support of this right cannot be unlawful even though it is opposed by state officials. Cf. *Wright* v. *Georgia*, — U. S. —, 31 L. W. 4487, where the Court held:

> Obviously, however, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the constitution.

Regarding the charges in respect to Autherine Lucy, there can be no doubt that NAACP attorneys may lawfully represent in the courts any litigant seeking to obtain Fourteenth Amendment rights. *NAACP* v. *Button*, 371 U. S. 415.

The only remaining basis to support the allegations of irreparable injury in the State's complaint is that petitioner engages in activities designed to eliminate various aspects of racial segregation in the State of Alabama. However, this Court has held in *Button*, *supra*, at page 430:

> We need not, in order to find constitutional protection for the kind of cooperative organizational activity disclosed by this record, whereby Negroes seek through lawful means to achieve legitimate political ends subsume such activity under a narrow,

> literal concept of freedom of speech, petition, or assembly. For there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. Thus we have affirmed the right "to engage in association for the advancement of beliefs and ideas."

The State of Alabama may not, because it is in disagreement with petitioner's goals, prohibit its members from exercising their right to freedom of association, upon which effective advocacy of individual beliefs is often dependent. As was said in *NAACP* v. *Alabama, supra* at 460:

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" secured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See *Gitlow v. New York*, 268 U. S. 652, 666; *Palko* v. *Connecticut*, 302 U. S. 319, 324; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Staub* v. *City of Baxley*, 355 U. S. 313, 321.

The State has shown no subordinating interest which permits suppression of petitioner's activities. It cannot intrude on constitutional freedoms by enjoining lawful activities, nor by avoiding the rendering of a decision on the merits in an attempt to prevent this Court from meeting the actual issues in this case. Either method would, if permitted, constitute a forbidden discrimination in contravention of the holdings of this Court.

This case is of grave public importance because it represents an attempt by a state to circumvent the decisions of this Court which may be followed by other states as well.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion, Supreme Court of Alabama, February 28, 1963

MERRILL, *Justice*:

This appeal is from a final decree of the Circuit Court of Montgomery County, in Equity, dissolving a previously issued temporary injunction, but permanently enjoining and restraining appellant from conducting intrastate business in Alabama, and ousting appellant from this State. The decree was entered on December 29, 1961.

This appeal requires an affirmance of the decree of the lower court without a consideration of the merits of the case.

This court has one set of rules for all litigants, and all are treated alike, regardless of whom they may be. We are not a court which treats most litigants one way, but has favored and special treatment for the litigant who comes into court on an alleged racial issue.

Rules of procedure are not traps concocted to evade decisions. Our present rules were framed at the request of the bar and in consultation with a committee of the bar. They were "adopted to facilitate business and be an aid to the court in its prompt and orderly disposition, a result in which the profession and those whom it represents are greatly interested." *Ogburn-Griffin Gro. Co.* v. *Orient Ins. Co.*, 188 Ala. 218, 66 So. 434; *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341; *Wilson* v. *McClendon*, 259 Ala. 382, 66 So. 2d 924.

Our determination of this appeal does not require examination beyond appellant's brief. The brief contains an adequate "Statement of Case," "Statement of Facts" and "Propositions of Law," but it is the "Argument" section which is inadequate.

Supreme Court Rule 9, requires in subsection (d), that the argument section of an appellant's brief contain "argument with respect to errors assigned which counsel desire to insist upon." The rule plainly states that assignments of error are to be argued in the argu-

ment section of a brief. The reason for this rule was set out explicitly by the Court of Appeals in *De Graef* v. *State*, 34 Ala. App. 137, 37 So. 2d 130, as follows: "The office of an appellate brief is to aid an appellate court to understand quickly the issues involved, and by points, proposition and arguments, supported where possible by citation of authority, present to the court the questions in controversy."

An assignment of error is an instrument of appellate pleading, *Board of Education of Colbert County* v. *Mitchell*, 270 Ala. 594, 121 So. 2d 103; *Wetsel* v. *Hobbs*, 249 Ala. 434, 31 So. 2d 639, and only adverse rulings of the trial court are subject to assignment of error and reviewable on appeal, *Clark* v. *Mudson*, 265 Ala. 630, 93 So. 2d 138; *Central of Georgia Ry. Co.* v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290.

Appellant has listed twenty-three assignments of error, but many of them are without merit because they present nothing for review. However, the mere listing of unmeritorious assignments of error is not a violation of any of the rules of appellate procedure, because those "not substantially argued in brief will be deemed waived and will not be considered by the court." Supreme Court Rule 9.

However, we have a rule of long standing and frequent application that where unrelated assignments of error are argued together and one is without merit, the others will not be considered. *Mize* v. *Mize*, 141 So. 2d 200; *Pak-A-Sak of Ala., Inc.* v. *Lauten*, 271 Ala. 276, 123 So. 2d 122; *McElhaney* v. *Singleton*, 270 Ala. 162, 117 So. 2d 375; *Shelby Co.* v. *Baker*, 269 Ala. 111, 110, So. 2d 896; *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Ford* v. *Bradford*, 218 Ala. 62, 117 So. 429; 2A Ala. Dig., Appeal & Error, Key 736. The reason for this rule is the same as the rule which requires assignments of error

to be argued. With all of the volume of work before this court, it is simply a physical impossibility for the justices to go over every transcript of every appeal in civil cases to ascertain if reversible error may be lurking somewhere in the record. Appellants must assist the court in pointing out error if the docket of this court is to be workable. But, for insubstantial or unargued assignments of error to be lumped with seriously contested assignments of error actually makes our task more burdensome than if no assignments of error were made. For in such event, we must not only ascertain whether or not there was reversible error, but then we must comb the record to see if the error was properly raised and preserved. It was to eliminate such that the rules were promulgated.

The argument section of appellant's brief is divided into five different subdivisions, each dealing with the argument of two or more assignments of error.

Assignments of error 11 and 16 are argued together in subsection I. No. 11 reads:

> "That the Final Judgment herein entered constitutes a denial to Appellant and its members of the right to freedom of speech and freedom of association secured under the Fourteenth Amendment to the Constitution of the United States."

This statement probably would be adequate as a proposition of law or as a conclusion in an argument, but it is not sufficient as an assignment of error. The office of an assignment of error is not to point out legal contentions but only to inform this court that appellants assign as erroneous certain named rulings. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397.

A more specific statement was made as to assignment of error No. 17 in *Roan* v. *Smith*, 272 Ala. 538, 133 So. 2d 224, than as to assignment 11 in the instant case, but we held it insufficient because it not only failed to "state that the court erred," but it did not "show any way in which the court erred."

Since assignment of error 11 was without merit and was argued together with unrelated assignment of error 16, neither will be considered by the court. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198. We do not intimate that assignment No. 16 in the instant case presented anything for review.

In Subsection II of appellant's argument, assignments of error 5, 6 and 7 are argued together. Number 7 is not related to 5 and 6, and reads:

> "The trial Court Judge erred in denying Appellant's Motion to recuse himself (trial Judge) from hearing this cause, and as such it constituted a denial of rights secured Appellant under the equal protection and due process of law clauses of the Fourteenth Amendment to the United States Constitution."

If the refusal of the trial court to recuse himself can be reviewed by this court on this appeal under assignment of error No. 7, it is a proper assignment; but if the question cannot now be considered, the assignment of error is without merit.

Our cases repeatedly hold that the appropriate remedy to require a judge or other judicial officer to recuse himself, or to require him to act when he has recused himself, is mandamus. *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664; *Riley* v. *Wilkinson*, 247 Ala. 231, 23 So. 2d 582; *Lindsey* v. *Lindsey*, 229 Ala. 578, 158 So. 522; *McConnell* v. *Goodwin*, 189 Ala. 390, 66 So. 675, Ann. Cas.

1917A, 839; *Ex parte State Bar Association*, 92 Ala. 113, 8 So. 768.

In the last cited case, this court, speaking through McClellan, J., decided that mandamus was the proper remedy, and said that the point "appears to be too well settled by the authorities to justify or even admit of much discussion."

The judge before whom a proceeding is brought must determine, in the first instance, the question of his own competency. This decision may present to him a delicate and difficult question, but in solving it he is without discretion, and his action, if erroneous, is subject to be controlled by mandamus seasonably applied for. *Smith* v. *Fitts, Judge*, 139 Ala. 152, 36 So. 20; *Ex parte Dew*, 7 Ala. App. 437, 62 So. 261.

It was with these authorities in mind that we said in *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664, that the appropriate remedy to require a judge to recuse himself on account of bias or prejudice is mandamus, but the party seeking the recusal has the right to make the motion for recusal in the main proceeding in order to get a ruling by the court on which to base the application for mandamus.

In *Cook* v. *State*, 269 Ala. 646, 115 So. 2d 101, we said:

> "If, as argued, Judge Jones was not in fact a judge at the time and place, that proposition could only be raised or sustained in a direct proceeding against Judge Jones in which he is a party. Here, the objection was made to Judge Jones himself. Judge Jones was called upon to decide whether or not he was a qualified judge. This was a question only a judge could answer. The rule is that to determine the competency of the judge to act in a given case, the party objecting must bring

> an action in which the judge himself is a party. The question cannot be determined in a proceeding before the judge being questioned, or on appeal * * *."

Appellant evidently knew the law because it seasonably filed a mandamus proceeding in this court to require the trial judge to recuse himself, but then failed or refused to file a brief even after "the clerk of the court notified counsel for petitioner that brief and argument should be filed in accordance with the rule" (Supreme Court Rule 12, which requires the appellant to file a brief). We had no alternative than to dismiss the action. *N.A.A.C.P.* v. *Jones*, 268 Ala. 504, 109 So. 2d 140.

Appellant had its day in court, it raised the question of recusal in the proper manner, its grounds then were the same as here argued, the proof was substantially the same, and the trial judge was properly made a party, yet appellant failed, after notice, to file the necessary brief. We hold that appellant cannot now raise the question on appeal which it had raised in the mandamus proceeding, and could have secured an adjudication thereon if it had pursued the remedy available to it.

It follows that assignment of error 7 is without merit, and the other nonrelated assignments of error argued along with it will not be considered. *First National Bank of Birmingham* v. *Lowery*, 263 Ala. 36, 81 So. 2d 284.

Assignments of error 2, 3, 4, 8 and 17 are argued together in Subsection III. Nos. 2, 3 and 4 are related but are not related to No. 17. But Nos. 2, 3 and 4 charge error in that the judgment and decree are contrary "to the weight of the evidence" (2), "contrary to the law" (3), and "contrary to the evidence and the law" (4).

We have repeatedly held that this type of assignment of error is without merit and presents nothing for review. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Roan* v.

Smith, 272 Ala. 538, 133 So. 2d 224; *Morris* v. *Yancey*, 272 Ala. 549, 132 So. 2d 754; *Mulkin* v. *McDonough Construction Co. of Ga.*, 266 Ala. 281, 95 So. 2d 921; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623.

Applying the same rule as heretofore applied to the previous subsections, none of the assignments of error will be considered. *Bertolla* v. *Kaiser*, 267 Ala. 435, 103 So. 2d 736.

Assignments of error 12, 22, 1, 13, 15, 19, 21, 18, 14 and 20 are argued together in Subsection IV of the argument section. Many of these assignments are unrelated, and some merely assign various reasons why appellant considers the decree to be erroneous. No. 14 deals with the preponderance of the evidence and presents nothing for review. *Thomas* v. *Brook*, 1 Div. 894, Sup. Ct. Ms.; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623. No. 19 contends that the judgment is without foundation in law or fact. Such an assignment is not sufficient. *Vickers* v. *Vickers*, 273 Ala. 645, 144 So. 2d 8, and cases there cited.

It is essential that assignments of error be predicated on a ruling of the court, and when they are not so predicated, they will be disregarded. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Central of Georgia Ry. Co.* v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290; *Life & Casualty Ins. Co.* v. *Womack*, 228 Ala. 70, 151 So. 880; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397; *Freeman* v. *Blount*, 172 Ala. 655, 55 So. 293.

Since some of the assignments of error are without merit, we again apply the rule that where several assignments of error are grouped and argued together in brief, and one is found to be without merit, the court will not consider the others. *Bolton* v. *Barnett Lumber & Supply Co.*, 267 Ala. 74, 100 So. 2d 9.

Assignments of error 10, 16 and 23 are argued together in Subsection V of appellant's brief. No. 10 is unrelated to the others and charges that the court erred in denying appellant's motion for rehearing.

It is settled that a decree denying an application for rehearing will not support an appeal; nor is such a decree subject to review on assignments of error on appeal from the final decree. Equity Rule 62, Code 1940; *Long* v. *O'Mary*, 270 Ala. 99, 116 So. 2d 563; *O'Bar* v. *Town of Rainbow City*, 269 Ala. 247, 112 So. 2d 790; *Oliver* v. *Dudley*, 267 Ala. 87, 100 So. 2d 327; *Hipp* v. *McMurry*, 263 Ala. 11, 81 So. 2d 531; *Whitman* v. *Whitman*, 253 Ala. 643, 46 So. 2d 422; 2 Ala. Dig., Appeal & Error, Key 110; 2A Ala. Dig., Appeal & Error, Key 870(6).

Since assignment of error 10 is without merit and is argued with Nos. 16 and 23, the others are not considered. *Taylor* v. *Taylor*, 251 Ala. 374, 37 So. 2d 645.

This disposes of every assignment of error except No. 9, and as it was not argued in brief, it will be "deemed waived and will not be considered by the court." Supreme Court Rule 9.

We note that the decree appealed from is not a unit, where the purported assignments of error go to the entire decree. As already stated, one part of the decree, the dissolving of the temporary injunction, was favorable to appellant and in accord with its contentions.

From the foregoing, it is clear that nothing is presented to this court for review. We are in the same position as if, first, there were no assignments of error or an inadequate assignment; or second, no proper brief had been filed. The failure to assign any errors or an inadequate assignment of errors requires the affirmance of the judgment below. *Stidham* v. *Stidham*, 264 Ala. 195, 86 So. 2d 294, and cases there cited. A decree will be affirmed where appellant files no brief insisting upon the assignments of error. *Farrior* v. *Stagg*, 44 So. 541; *Terry*

v. *Schaeffer*, 239 Ala. 264, 194 So. 502; *Black* v. *State*, 269 Ala. 269, 112 So. 2d 792. In *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341, we said:

> "The brief here presented is too radically deficient to be considered as a valid argument of the errors assigned on the record; without a complete nullification of the rule. We think the substance of the rule is worth preserving, and it can be preserved only by its enforcement; viz., by holding that in this case all assignments of error are waived. In that view, the judgment must be affirmed."

It follows that the decree of the trial court is affirmed.

A final observation is in order. It came out in oral argument that on the same day this case was argued before this court on December 18, 1962, a motion was set for hearing in Federal District Court in Montgomery, which charged that submission of this case had been delayed from May to December by this court and that appellant believed that the delay was a deliberate one.

The charge that this delay was a deliberate one on the part of this court was false and without foundation in fact, and must have been known to have been false by counsel for appellant, because any experienced or informed attorney would have so known.

The decree was entered and filed December 29, 1961. The appeal was taken January 22, 1962. Appellant knew at that moment that it had approximately three and one-half months in which to get the case submitted in the event it desired to have the case set on the oral argument docket.

The weeks for hearing orally argued cases from the various counties are set by Tit. 13, §§ 21 and 22, Code 1940.

Since 1896, the times for hearing cases from Montgomery County have been the third Monday after the fourth Monday in November and the second Monday after the fourth Monday in April; those dates in 1962 were May 7 and December 17, and those dates were listed in the calendars published by this court and the Court of Appeals.

The record in this case is over 1347 pages and is in three volumes, yet it was filed in this court on March 19, 1962, less than the sixty day period allowed. Under our rules, appellant had thirty days from March 19 to file its brief. Had time been important, the brief could have been filed immediately.

But on April 16, just two days before the brief had to be filed, appellant requested and was granted fifteen additional days to file its brief and the time was extended to May 3. When this extension of time was requested, appellant then knew that the case could not be heard the week of May 7, and when the brief was filed and appellant requested oral argument, appellant knew that the cause would have to be carried over to the week of December 17, the week it was set, argued and submitted in this court. We repeat—any delay in the submission of this case in this court after the appeal was taken was caused wholly and exclusively by appellant.

This being an injunction case, if time had been important, Supreme Court Rule 47, as amended, 263 Ala. XXII, could have been invoked to secure an early submission. Not only was Rule 47 not invoked, but as already shown, the appellant was solely responsible for any delay from the time the decree was rendered to the date of submission in this court.

Affirmed.

LIVINGSTON, C. J., SIMPSON AND HARWOOD, JJ., concur.

APPENDIX B

Brief Filed by Petitioner in the Supreme Court of Alabama

Statement of Case

This is an appeal from a final decree and judgment of the Circuit Court of Montgomery County, Alabama, in equity, rendered on the 29th day of December, 1961 (R. 1041-1043); said decree, among other things, permanently ousted appellant from doing business in the State of Alabama and enjoined appellant from filing with the Department of Revenue and the Secretary of State of the State of Alabama, any applications, papers or documents for the purpose of qualifying to do business within the State of Alabama.

On June 1, 1956, the State filed a Bill of Complaint in the Circuit Court of the Fifteenth Judicial Circuit of Alabama. The complaint alleged that appellant, the National Association for the Advancement of Colored People, was maintaining offices in Birmingham, Alabama, its Southeast Regional Office, and had organized local chapters in the State of Alabama; had employed or paid Autherine Lucy and Polly Myers Hudson to encourage them to enroll as students at the University of Alabama; had furnished legal counsel to Autherine Lucy in her proceedings against the University of Alabama; had engaged in organizing and supporting illegal boycotts conducted against the Capitol Motor Lines by the residents of Montgomery, Alabama; and had failed to file its Articles of Incorporation and designate an authorized agent to receive service pursuant to Title 10, Sections 192, 193 and 194, Code of Alabama 1940 and Article XII, Section 232 of the Constitution of Alabama that by these acts had done irreparable injury to the State, and prayed that the appellant be permanently ousted (R. 2-5).

On the same day, without notice or hearing to appellant, the Circuit Court entered *ex parte* a temporary restraining order and injunction which in effect ousted appellant from the State and barred appellant from complying with the

Alabama law requiring foreign corporations to register with the Secretary of State (R. 18).

Appellant filed a motion to dissolve the injunction (R. 22, 23), demurrers to the Bill (R. 27). On July 11, pursuant to a motion of the State, the court below entered an interlocutory order requiring the appellant to produce, among other things, the names and addresses of all of its members in the State (R. 31, 32).

Appellant moved to set aside and vacate this order (R. 36), and at the same time filed its Answer to the Bill (R. 32-39) in which it admitted that it had not complied with the requirements of Sections 192-194, Title 10, Code of Alabama, 1940, and Article XII, Section 232 of the Constitution of the State. It denied that it had employed or paid money to Autherine Lucy or Polly Myers Hudson, but admitted that it had furnished counsel for Autherine Lucy in her controversy with the University of Alabama; and admitted that it had provided moral and financial support to the Negro residents of Montgomery in connection with their refusal to use the public transportation system, but denied that the boycott was illegal and all other allegations and inferences in the Bill of Complaint in respect to that matter.

Appellant pointed out that it was a non-profit membership corporation, incorporated under the laws of the State of New York, and that its principal purposes and objectives were to improve the status of Negroes in American life; that its branches were independent, unincorporated associations, holding chapters granted by appellant permitting them to use appellant's name; that it did no business in the State within the meaning of the Constitution and laws of Alabama; and that its activities exempt it from requirements of registering as an out-of-state corporation under Title 10, by Section 198 of Title 10 of the Code of Alabama, 1940. Moreover, appellant alleged as a defense that the

state was barred by laches in these proceedings in view of the fact that N.A.A.C.P. branches had been in operation in Alabama since 1918; the organization had been furnishing counsel and legal assistance to Negroes seeking vindication of their constitutional rights in Alabama since 1932; that it had opened its Southeast Regional Office in Birmingham in April of 1951, and had operated the same, openly and continuously since that time; that during a long period of time attorneys engaged by appellant had represented Alabama Negroes in litigation defended by the State, and that the State and the Attorney General's office were well aware of appellant's existence in Alabama and that despite these undeniable facts at no time did the State give notice to appellant that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register with the Secretary of State; as a matter of fact, the Attorney General had recently been in correspondence with appellant and at no time called upon appellant to register, prior to these proceedings.

The Answer further alleged that the Bill of Complaint sought to prohibit persons from pursuing under the aegis of the N.A.A.C.P. lawful activities to secure an end to racial segregation and discrimination, in violation of the rights of appellant, its members and prospective members to freedom of speech, freedom of assembly, due process and equal protection of the laws.

Appellant alleged that no injury had resulted to any citizen of the State by its failure to register and that, hence, requisite equity jurisdiction was lacking. Appellant questioned the good faith of the State in instituting these proceedings.

In spite of the fact that appellant alleged that it did not feel the necessity to register, it offered to do so, to waive its right and attached a copy of the forms filled out, requesting the court's permission to file them.

Brief Filed by Petitioner in the Supreme Court of Alabama

Because of the appellant's failure to comply with the order of the court and provide the State with the names and addresses of its members, it was adjudged in contempt (R. 41, 73). Eventually, this matter went to the Supreme Court of the United States and contempt decree was reversed in *N.A.A.C.P.* v. *Alabama*, 337 U. S. 449.

Prior to the final disposition of that case, a petition in contempt was filed by the State in the court below on April 19, 1958 (R. 77-113). In that proceeding, a motion was made by appellant to disqualify Walter B. Jones on the grounds of personal bias, alleging that in articles written by Mr. Jones and in TV and radio broadcasts, Judge Jones had made statements indicating a personal bias against the N.A.A.C.P. (R. 89-105). That motion was denied and these proceedings continued without final disposition.

After the judgment of the Supreme Court of the United States, the Supreme Court of Alabama held that appellant had not complied with orders of the court other than the order requiring disclosure of membership lists and was still in contempt, 268 Ala. 531.

The Supreme Court of the United States again reversed, 360 U. S. 240.

The Supreme Court of Alabama failed to act on the mandate of the Supreme Court of the United States and proceedings were begun in the United States District Court for the Northern District of Alabama on June 23, 1960 (R. 546-626) for the federal court to take jurisdiction of this cause. These proceedings eventually reached the Supreme Court of the United States. That Court, on October 23, 1961, — U. S. —, 30 L. W. 3130, ordered the federal court to a trial of the issues involved unless the State of Alabama had provided appellant with a hearing by January 2, 1962. Pursuant thereto, a hearing was set down in the Circuit Court for December 27, 1961.

Brief Filed by Petitioner in the Supreme Court of Alabama

Interrogatories (R. 118) and the answers thereto (R. 131) are made a part of this record.

On December 11, 1961, respondent filed an amendment to its complaint (R. 135-136). At the pre-trial conference (R. 137-151, 318-385), appellant's motion to disqualify the presiding judge was renewed and denied (R. 148-149, 332-334).

On the 27th of December, 1961, at the trial, the original complaint was further amended in respect to paragraph 9 by placing a period after the word "race" and striking the remainder of the paragraph (R. 151).

The testimony on the original hearing on the motion for production of documents is set forth at R. 162-204. The testimony on the petition for contempt is set forth at R. 207-316. The hearing on the merits and the bill of complaint took place on December 27, 28 and 29, 1961 (R. 336-746).

On December 29, 1961, the court entered a final decree in which it permanently restrained and enjoined the appellant from conducting any business of any kind within the State, from soliciting members, soliciting contributions or collecting membership dues of contributions and from filing with the Department of Revenue and Secretary of State any application or document for the purpose of qualifying to do business (R. 1041-1043).

The appellant filed a motion for rehearing on January 8, 1962 (R. 1044-1047). The motion was denied on January 12, 1962 (R. 1047). On January 22, 1962, appellant filed a notice of appeal to this Court (R. 1048-1050), and on March 19, 1962, the record in this cause was filed in this Court, along with the appellant's assignment of errors.

STATEMENT OF FACTS

Appellant is a non-profit membership corporation organized under the laws of the State of New York. It en-

gages in no commercial enterprises (R. 675); its entire business is to get rid of inequalities of citizenship (R. 676-678). Its aims are to improve the status of Negroes in American life (R. 673, 674). Its various units are unincorporated associations which function pursuant to charter granted by the National Office. Appellant seeks to achieve its objectives through peaceful and lawful means (R. 674), and does not condone or employ violence (R. 675).

Its first units in Alabama were established in 1918 (R. 675). In June, 1956, prior to the injunction issued in these proceedings, appellant had approximately 12,000 members in the state (R. 685); a state wide organization, a Southeast Regional office in Birmingham, and a Regional Secretary and Field Secretary as employees of the national organization. Since June 1, 1956, this office was closed and all activities of appellant in Alabama were discontinued.

The evidence in this case was presented on three separate occasions. The first evidence was introduced on July 25, 1956, in connection with the appellee's motion to require appellant to produce certain books, papers and documents (R. 28-32, 165-204). This phase of the case was finally decided in N.A.A.C.P. v. Alabama, 357 U. S. 449. The next testimony was taken on Wednesday, June 18, and Friday, June 20, 1958. This evidence was in support of appellant's motion for disqualification of the presiding judge and in support of appellee's petition for contempt (second) (R. 89-105, 205-316). The hearing on the merit took place on December 27, 28, and 29, 1961.

In support of appellant's motion for disqualification of the presiding judge, the appellant presented testimony from the following witnesses: Grover C. Hall, Fred D. Gray, Solomon S. Seay, Jr., and Honorable Walter B. Jones. Appellant also relied upon the following exhibits, No. 1, Montgomery Advertiser, dated April 6, 1958, Page 5-B; No. 2, Montgomery Advertiser, May 4, 1958, Page 7-B; No.

3, Montgomery Advertiser, May 12, 1958, Page 4-A; and No. 4, an article in "Alabama Bible Society Quarterly" Vol. XIII, dated October 1957.

GROVER C. HALL: The witness, Grover C. Hall, testified that he was editor-in-chief of the Montgomery Advertiser. This witness was used to lay the proper foundation for the introduction of appellant's exhibits No. 1 (R. 218-227); No. 2, (R. 229-244), and No. 3 (R. 245-249). Each of these exhibits contained statements made by the presiding judge or, on his behalf, which showed bias and prejudice toward appellant.

FRED D. GRAY: The witness, Fred D. Gray testified that he saw and heard a television program on May 5, 1958, over Montgomery, Alabama Television Station W.C.O.V., on this program, the presiding judge appeared as a candidate for re-election as Circuit Judge. The witness testified that according to his best recollection, the speech was short and the presiding judge said in effect the following: "That I intend to deal the N.A.A.C.P. and its counterpart, the Montgomery Improvement Association, a blow from which they will never recover. That's my best recollection of it" (R. 250-251).

SOLOMON S. SEAY: This witness testified that he also saw and heard the political telecast on W.C.O.V. TV, May 5, 1958, and that the presiding Judge said "I intend to deal the N.A.A.C.P. and its local counterpart, the Montgomery Improvement Association, a blow from which they will never recover or words to that effect" (R. 250-251).

HONORABLE WALTER B. JONES: The next witness that testified in support of Appellant's motion for disqualification was the presiding judge. He identified and admitted writing the article identified as Appellant's exhibit No. 4 (R. 257-272). This article contained statements which shows that the presiding judge was biased and prej-

udiced toward Appellant and toward the causes which Appellant advocates.

JOE AZBELL: In opposition to Appellant's motion for disqualification testimony was adduced from Joe Azbell. The witness Joe Azbell testified that he was the promotion manager of the Montgomery Advertiser and that he handled the advertisement which is Appellant's exhibit No. 2. He testified that the handling of the lay out of the proofs of the ads were handled by persons other than Judge Walter B. Jones (R. 275-277).

This case was heard on the merits on December 27, 28, and 29, 1961. At the beginning of the hearing Counsel for Appellant observed that the spectators were segregated based on race. Appellant moved the Court to enter an order whereby persons may be seated in the courtroom without regard to race and color. This motion was denied (R. 337). Appellant also made a motion that, Negro witnesses and lawyers be referred to by proper courtesy titles. This motion was denied (R. 337-338).

Appellee introduced the following documentary evidence: The questions and answers to the interrogatories propounded by the Appellee to the Appellant (R. 363-384). The Court received into evidence over Appellant's objection an attested copy of the opinion, conclusion and findings of facts of Judge Crooms in the case of *Autherine J. Lucy* v. *William F. Adams* (R. 394-410); Part of the Record in case of *N.A.A.C.P.* v. *MacDonald Gallion and Bettye Frink*, in the U. S. District Court for the Middle District of Alabama (R. 544-626). Over Appellant's objection the Judgment and Sentence in the case of *State of Alabama* v. *M. L. King, Jr.*, case no. 7399 was introduced (R. 630-636).

STEWART CULPEPPER.

The first witness to testify on behalf of Appellee was Stewart Culpepper, who testified substantially as follows:

He is a newspaper reporter, presently employed by the Atlanta Constitution and formerly employed by the Montgomery Advertiser and was so employed in 1957. In the month of November, 1957 he was in Atlanta, Georgia covering a meeting at which meeting Roy Wilkins, the Executive Secretary of Appellant was one of the presiding officers. He further testified that W. C. Patton attended the two day meeting in Atlanta.

On cross-examination he testified that this was a meeting of representatives from the various Southern states and various organizations which was being held on the question of voter registration throughout the South. Over Appellant's objection several photographs of persons attending the meeting were introduced into evidence. Some of these persons were erroneously identified by the witness (R. 426-428).

T. A. MAY.

The next witness for the Appellee was T. A. May who testified substantially as follows:

He was district manager for Western Union in Birmingham, Alabama and held that position in August of 1961. On August 6, 1961, a telegram was sent from Birmingham by W. C. Patton to C. W. Lee at the Sheraton Park Hotel in Washington, D. C. and charged to telephone number 592-9366. Over Appellant's objection the contents of the telegram was read and received into evidence (R. 430-431).

C. W. LEE.

C. W. Lee a witness for Appellee testified that he knew W. C. Patton of Birmingham, Alabama and that at one time he, the witness, was a member of Appellant's organization but has not been a member since 1956. On August 6, 1961 he was a guest at the Sheraton Park Hotel in Washington, D. C. and received a telegram from W. C. Patton.

The witness was attending a meeting of National Negro Funeral Directors Association. The telegram that he received from Mr. Patton was on behalf of the Alabama State Co-Ordinating Association for registration and voting, asking that the funeral directors association make a contribution to the Alabama Co-Ordinating Association. This telegram had nothing at all to do with Appellant (R. 441).

W. C. PATTON.

W. C. Patton was called as a witness for Appellee and testified substantially as follows:

That he is colored and have been connected with Appellant, for about 12 to 15 years. At various times he has held positions with Appellant branches in Alabama. That prior to 1956, he was field representative for Appellant in the State of Alabama. That he is an official in the Alabama State Co-Ordinating Association for registration and voting. However, that organization is a separate and distinct organization from Appellant and that there are no connections between the two. He admitted knowing Roy Wilkins, the Executive Secretary of Appellant and that on several occasions he has made telephone calls to him. This witness denied that he had transacted any business whatsoever for Appellant in the State of Alabama since June 1, 1956.

W. M. EAGERTON.

This witness is employed by the Southern Bell Telephone Company, and is the North Alabama Public Relations Manager for that company. He identified the unlisted telephone number as being that of W. C. Patton and testified over Appellant's objection to telephone calls made from W. C. Patton's phone number to Appellant's office in New York and to other persons who reside both within and outside the state of Alabama (R. 456).

Brief Filed by Petitioner in the Supreme Court of Alabama

On cross-examination he testified that he was not the custodian of the records of Southern Bell Telephone Company and that the subpoena for his appearance in court was directed to him directly and not to the Southern Bell Telephone Company. He also testified that the Attorney General's office had prior knowledge of the existence of these telephone calls. He further testified that he is the son of Ralph T. Eagerton, Sr. The Court refused to permit Appellant to show that this witness' father and his brother were employees of Appellee (R. 512-517).

PHIL M. LIGHTFOOT.

This witness called by the Appellee, testified that in 1954, when he was Mayor of the City of Tuskegee, Alabama, he received a copy of the National Association for the Advancement of Colored People News (Tuskegee Branch), Volume 1, #4 and Volume 1, #5. These newsletters were dated November 21, 1954 and November 23, 1954 respectively. On cross-examination the witness testified that to his best recollection he has not received a copy of any such pamphlet since June 1, 1956.

DR. C. J. ROHLING.

Dr. Rohling testified that he is the State Toxicologist and over Appellant's objection identified the signature on an application for an operator's license, as being the same signature as that that appeared on Appellee's exhibit 24. Over Appellant's objection the Court admitted it to evidence Appellee's exhibits 23 & 24. Said exhibits having not been connected in any way with Appellant.

The last witness Mr. Harry Cobbs testified that he is employed by the First National Bank of Montgomery and over Appellant's objection the Court received into evidence a copy of the bank signature card of an account in the name of "Mrs. E. W. Taggert or Essie Bolden Taggert."

Brief Filed by Petitioner in the Supreme Court of Alabama

At the conclusion of Appellee's case, Appellant moved to dismiss the Complaint, which motion was denied (R. 663-673).

Roy Wilkins.

The first witness for the Appellant was its Executive Secretary. He described the organizational structural of Appellant and stated the various states where it maintained local chapters. He also stated the objects and purposes of the organization, the principal purpose being to secure the constitutional and citizenship rights of the Negro minority in this country (R. 674). Appellant uses only lawful means for obtaining its objects and purposes. The witness further testified that it is a tax exempt organization under Federal laws. The witness further testified that in 1936, the present governor, the former Attorney General of this state, John Patterson requested certain information from Appellant which information was immediately sent to the then Attorney General. Appellant has received no notice informing it that it was required to register in order to do business in the State of Alabama. He also testified that Appellant has conducted no business of any kind within the State of Alabama since June 1, 1956, and has maintained no office and has solicited no membership nor funds in this State since that day.

Appellant called as witnesses, William F. Thetford, Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama; George H. Jones, Jr., Register of the Circuit Court of Montgomery County, Alabama; and John R. Matthews, Clerk of the Circuit Court of Montgomery County, Alabama (R. 698-704); and offered to prove by these witnesses that during their tenure in office they had no personal knowledge of nor neither did their records reflect an action ever commenced by the Attorney General of the State of Alabama against any other respondent similar to the action that was brought against Appellant.

Brief Filed by Petitioner in the Supreme Court of Alabama

The Appellant called Mrs. Bettye Frink, Secretary of the State of Alabama as one of its witnesses. She testified that she issued a statement which appeared in the Alabama Journal which statement was derogatory toward Appellant and indicates a hostile attitude toward Appellant by the State of Alabama (R. 701-702).

W. C. McNair.

Mr. McNair testified substantially as follows:

That he is chief of the Franchise Tax Division for the State of Alabama, which division answers inquiries with reference to foreign corporations qualifying to do business in the State of Alabama. He testified that his office received a letter from the First Manassas Corporation (R. 709), inquiring about qualifying to do business in this state; and that on October 4, 1960 a letter was sent to that organization from his office informing that corporation that "your organization is exempt from qualifying in Alabama as a foreign corporation" (R. 712).

The last two witnesses for Appellant were William P. Mitchell and Charles C. Gomillion. The witness, Mitchell testified substantially as follows: That he is familiar with the Alabama State Co-ordinating Association for registration and voting; it was founded in 1952 and has continued to exist until today. He further testified that the Appellant has no control over the Alabama State Co-Ordinating Association for registration and voting and that said organization is not a subsidiary of Appellant.

The witness, Gomillion was the last witness to testify for Appellant. He testified that he is a life member of Appellant and has been for some time. However, he has not participated in any National Association for the Advancement of Colored People activities in this state since June 1, 1956. He further described the Tuskegee Civic Association and stated that the Appellant has not nor has

it attempted to dictate the policies of the Tuskegee Civic Association, and to his knowledge Appellant has engaged in no activities in the State of Alabama since June 1, 1956.

PROPOSITIONS OF LAW

PROPOSITION OF LAW I

THE PROCEEDINGS HEREIN AND THE JUDGMENT AND DECREE CONSTITUTE AN UNLAWFUL ABRIDGEMENT OF APPELLANT'S RIGHTS AND OF THE RIGHTS OF ITS MEMBERS TO FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION GUARANTEED AGAINST STATE INTRUSION UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

N.A.A.C.P. v. *Alabama*, 357 U. S. 449;
Bates v. *Little Rock*, 361 U. S. 516;
Louisiana v. *N.A.A.C.P.*, 366 U. S. 293.

PROPOSITION OF LAW II

APPELLANT HAS BEEN DENIED IN THE PROCEEDINGS AND BY THE JUDGMENT ENTERED THEREON A FAIR AND IMPARTIAL HEARING REQUIRED UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

State ex rel. La Russa, et al. v. *Himes*, 197 So. 762 (1940);
In Re Murchison, 349 U. S. 133;
Moore v. *Dempsey*, 261 U. S. 86.

PROPOSITION OF LAW III

RESPONDENT HAS NO STATUTORY AUTHORITY TO OUST APPELLANT, AND IS BARRED FROM DOING SO IN EQUITY BY EQUITABLE PRINCIPLES AND BY LACHES.

Pepperell Mfg. Co. v. *Ala. National Bank*, 261 Ala. 665 (1954);

United States v. *Stinson*, 125 F. 907 (C. A. 7, 1903), affirmed 197 U. S. 200;
Brown v. *Tuskegee Light and Power Co.*, 232 Ala. 361, 168 So. 159 (1936);
Daniell v. *Sherrill*, 48 So. 2d 736 (Fla. 1950).

PROPOSITION OF LAW IV

THE JUDGMENT ENTERED HEREIN IS SO GROSSLY CONTRARY TO THE EVIDENCE AND APPLICABLE LAW AS TO VIOLATE APPELLANT'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW SECURED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Southern Railway v. *Greene*, 216 U. S. 400;
Simonetti Bros. Produce Co. v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38 (1940);
Freeman v. *Hewitt*, 329 U. S. 249;
Terral v. *Burke Construction Co.*, 257 U. S. 529;
Liggett v. *Baldridge*, 278 U. S. 105.

PROPOSITION OF LAW V

THESE PROCEEDINGS AND JUDGMENT ENTERED HEREIN CONSTITUTE STATE-IMPOSED RACIAL DISCRIMINATION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. Cf.

Gomillion v. *Lightfoot*, 364 U. S. 339;
Dawson v. *Mayor*, 350 U. S. 877;
Gayle v. *Browder*, 352 U. S. 903;
Holmes v. *City of Atlanta*, 124 F. Supp. 290 (N. D. Ga. 1954), aff'd 223 F. 2d 93 (C. A. 5th 1955) rev'd 350 U. S. 879;
Evers v. *Dwyer*, 358 U. S. 202;
Bailey v. *Patterson*, — U. S. —, 30 L. W. 4161.

Brief Filed by Petitioner in the Supreme Court of Alabama

PROPOSITION OF LAW VI

THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION GUARANTEES PERSONS FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION.

United States Constitution, Fourteenth Amendment;
Pierce v. *Society of Sisters*, 268 U. S. 510;
Sweezy v. *New Hampshire*, 354 U. S. 234;
N.A.A.C.P. v. *Alabama*, 357 U. S. 449;
International Union v. *Wisconsin Employment Relation Board*, 336 U. S. 25;
Shalten v. *Tucker*, 364 U. S. 479;
Garner v. *Louisiana*, 368 U. S. 157;
Watkins v. *United States*, 344 U. S. 148;
Cantwell v. *Conn.*, 310 U. S. 296;
Talley v. *California*, 362 U. S. 60.

PROPOSITION OF LAW VII

A CORPORATION IS A PERSON UNDER THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION AND IS ENTITLED TO DUE PROCESS OF LAW.

Gulf, Colorado and Santa Fe R.R. Co. v. *Ellis*, 165 U. S. 150, 154;
Liggett v. *Baldridge*, 278 U. S. 105.

PROPOSITION OF LAW VIII

ALL GOVERNMENTAL ENFORCED RACIAL SEGREGATION IS IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES.

Brown v. *Board of Education*, 347 U. S. 483;
Dawson v. *Mayor*, 350 U. S. 877;
Holmes v. *City of Atlanta*, 350 U. S. 879;
Gayle v. *Brower*, 352 U. S. 903;

New Orleans City Park Improvement Association v. *Detiege*, 358 U. S. 58;
Bailey v. *Patterson*, — U. S. —, 30 L. W. 4164, decided February 27, 1962;
Turner v. *Memphis*, — U. S. —, 30 L. W. 4262, decided March 27, 1962.

PROPOSITION OF LAW IX

STATE REGULATIONS AND STATE ACTION WHICH, IN PURPOSE AND EFFECT IMPOSES DISCRIMINATION IS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.

Yick Wo v. *Hopkins*, 118 U. S. 356;
Oyama v. *California*, 332 U. S. 633;
Takahashi v. *Fish and Game Commission*, 334 U. S. 410;
Gomillion v. *Lightfoot*, 364 U. S. 339.

PROPOSITION OF LAW X

DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN A JUDICIAL PROCEEDING REQUIRES A FAIR TRIAL IN A FAIR TRIBUNAL.

In Re Murchison, 349 U. S. 133;
United States ex rel. Darcy v. *Handy*, 203 F. 2d 407 (C. A. 3, 1953);
Moore v. *Dempsey*, 261 U. S. 86.

PROPOSITION OF LAW XI

BIAS ON THE PART OF A TRIAL JUDGE DENIES A LITIGANT EQUAL PROTECTION AND DUE PROCESS OF LAW.

State ex rel. McFerran v. *Justice Court*, 32 Wash. 2d 544, 202 P. 2d 927 (1949);
Ex Parte Wallace, 24 Col. App. 2d 933, 152 P. 2d 1 (1944);

Tumay v. *Ohio*, 273 U. S. 50;
Ex Parte Cornwell, 144 Ala. 497, 39 So. 354 (1905);
State ex rel. La Russa, et al. v. *Himes*, 197 So. 762 (1940).

PROPOSITION OF LAW XII

TITLE 10, SECTIONS 192, 193 AND 194, CODE OF ALABAMA, 1940, ARE MERE VENUE AND SERVICE OF PROCESS PROVISIONS WITH RESPECT TO FOREIGN CORPORATIONS, AND CAN BE MADE THE BASIS FOR EXCLUSION OF A FOREIGN CORPORATION ONLY IF THE PROVISIONS ARE APPLICABLE TO IT AND IT CONTINUES TO REFUSE TO COMPLY.

Pepperell Mfg. Co. v. *Ala. National Bank*, 261 Ala. 665 (1954);
Cadden-Allen, Inc. v. *Trans-Lux News Corp.*, 254, 234 Ala. 400.

PROPOSITION OF LAW XIII

WHEN A STATE SUBMITS ITSELF TO THE JURISDICTION OF A COURT OF EQUITY AND PRAYS ITS AID, ITS CLAIMS AND RIGHTS ARE JUDICABLE BY EVERY OTHER PRINCIPLE AND RULE OF EQUITY APPLICABLE TO THE CLAIMS AND RIGHTS OF PRIVATE PARTIES UNDER SIMILAR CIRCUMSTANCES.

State of Iowa v. *Carr*, 191 F. 257, 266 (8th Civ., 1911);
Daniell v. *Sherrill*, 48 So. 2d 736 (Fla. 1950), 23 A. L. R. 2d 1410;
Brown v. *Tuskegee Light and Power Co.*, 232 Ala. 361, 367, 368, 168 So. 157, 165 (1936);
United States v. *Property on Panto Island*, 24 F. Supp. 92 (S. D. Ala. 1947);
State ex rel. Roberson v. *The Town of Pell City*, 157 Ala. 380, 47 So. 246 (1908);

Powell v. *City of Birmingham*, 258 Ala. 159, 167, 61 So. 2d 11, 18 (1952);
State v. *Ward*, 133 So. 2d 383 (Ala., 1961);
United States v. *Stinson*, 123 F. 907, 910 (7th Civ. 1903), affirmed 197 U. S. 200.

PROPOSITION OF LAW XIV

A State Has no Absolute Power to Exclude a Foreign Corporation from Doing Business in That State.

Southern Railway v. *Greene*, 216 U. S. 400;
Freeman v. *Hewitt*, 329 U. S. 249;
Simonetti Bros. Produce Co. v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38;
Butler Bros. Shoe Co. v. *U. S. Rubber Co.*, 156 F. 1 (C. A. 8, 1907);
Crutcher v. *Kentucky*, 141 U. S. 47;
Terral v. *Burke Construction Co.*, 257 U. S. 529;
Western Union Telegraph Co. v. *Kansas ex rel. Coleman*, 216 U. S. 1;
Southern Railway v. *Greene*, 216 U. S. 400;
Hanover Fire Insurance Co. v. *Harding*, 272 U. S. 494.

PROPOSITION OF LAW XV

A State May Not Subject a Foreign Corporation to Unconstitutional Conditions in Order to do Business in That State.

Williams v. *Standard Oil Co.*, 278 U. S. 235;
Pullman Co. v. *Kansas ex rel. Coleman*, 216 U. S. 56;
People ex rel. Hakanson v. *Palmer*, 367 Ill. 543, 11 N. E. 2d 931 (1937);
Herndon v. *Chicago, Rock Island and Pacific Ry. Co.*, 218 U. S. 135;

Brief Filed by Petitioner in the Supreme Court of Alabama

Harrison v. *St. Louis and San Francisco Ry. Co.*, 232 U. S. 319;
Donald v. *Phila. and Reading Coal and Iron*, 241 U. S. 329;
Burns Baking Co. v. *Bryan*, 264 U. S. 504, 513;
New State Ice Co. v. *Liebmann*, 285 U. S. 262.

ARGUMENT

The evidence shows that appellant is a civil rights organization. It engages in activities designed to achieve the elimination of inequalities of citizenship in the United States based upon race. There has been no evidence to show that appellant has advocated or utilized any other than lawful means to secure the objectives sought. Thus, appellant and its members are exercising rights of freedom of speech and association guaranteed under the Fourteenth Amendment to the Constitution of the United States against state interference. See *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Obviously, the fact that these rights are being asserted by individuals in concert with others does not render the activity illegal or subject to prohibition. See *International Union* v. *Wisconsin Employment Relations Board*, 336 U. S. 245. The final judgment in this case denied appellant and its members the right to freedom of speech and of association; this question is before the court under Assignment of Error Number 11.

Certainly, it cannot be illegal in Alabama for individuals to advocate that racial segregation is unlawful and should be abolished, in view of the fact that the fundamental law of the United States is to the effect that any governmental enforced racial segregation is at war with the guarantees of the Constitution of the United States. See *Brown* v.

Board of Education, 347 U. S. 483; *Dawson* v. *Mayor*, 350 U. S. 877; *Holmes* v. *City of Atlanta*, 350 U. S. 879; *Gayle* v. *Browder*, 352 U. S. 903; *New Orleans City Park Improvement Assn.* v. *Detiege*, 358 U. S. 58; *Bailey* v. *Patterson*, — U. S. —, 30 L. W. 4164, decided February 27, 1962; *Turner* v. *Memphis*, — U. S. —, 30 L. W. 4262, decided March 27, 1962. Thus, the judgment and decree in these proceedings must necessarily rest upon some basis other than that appellant engages in activities designed to eliminate various aspects of racial segregation in the State of Alabama.

There has been no showing, however, that appellant has performed any acts or engaged in any activities injurious to the state other than the fact that it is committed to the elimination of racial discrimination in the United States. It is true that the state has produced evidence, in the form of records of the proceedings to show that Autherine Lucy publicized charges of conspiracy against the University of Alabama officials and that at the hearing her attorneys stated that these allegations could not be proved. The connection of appellant in this instance is that it admitted in its answer that it had furnished counsel for Miss Lucy in her controversy with the University of Alabama. However one views this situation, there can be no basis in fact or law to warrant or justify the judgment herein as a subordinating state interest warranting the intrusion on rights of freedom of speech and association herein effected. Cf. *Shelton* v. *Tucker*, 364 U. S. 479; *Sweezy* v. *New Hampshire*, supra.

The evidence that Martin Luther King was convicted of engaging in an illegal boycott, which appellant admits to giving moral and financial support, is equally an inadequate ground upon which the state may ground a valid intrusion upon the free exercise of the rights of appellant and its members to freedom of speech and association guaranteed

under the Fourteenth Amendment to the Constitution of the United States. Cf. *Garner* v. *Louisiana*, 368 U. S. 157.

There is no possible basis other than the two instances cited above to support the allegations in the complaint in respect to the charges of irreparable injury. But these instances cannot possibly separately or in concert afford that compelling justification essential to validate a state interference with freedom of speech and association which the judgment of the Court herein affects. See *Watkins* v. *United States*, 344 U. S. 148; *United States* v. *Rumely*, 345 U. S. 41; *Wieman* v. *Updegraff*, 344 U. S. 148; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Talley* v. *California*, 362 U. S. 60.

The evidence shows that appellant is being ousted from Alabama for the simple reason that it is an organization concerned with civil rights of Negroes in the United States. Appellant submits that such an attempt to enforce and perpetuate racial segregation is a denial of rights secured by the First and Fourteenth Amendments, as was stated in Assignment of Error Number 16. The Fourteenth Amendment clearly proscribes state direct or indirect interference with legitimate and lawful activities in this connection. Thus, unless some other basis for the judgment can be disclosed, since it obviously constitutes an intrusion on rights of free speech and assembly of appellant and its members, the judgment cannot stand.

II

The essence of due process and equal protection in a judicial proceeding is a fair trial in a fair tribunal. *In re Murchison*, 349 U. S. 133; *United States ex rel. Darcy* v. *Handy*, 203 F. 2d 407 (C. A. 3, 1953).

The record in this case demonstrates not only the atmosphere of bias surrounding the whole proceeding but also the personal bias of the presiding judge. Spectators at the trial were compelled to take seats on a segregated

basis (R. 337) and a motion to integrate the courtroom was denied. Appellant submits in Assignment of Error Number 5 that this denial was a deprivation of procedural and substantive due process and equal protection.

White witnesses were politely addressed as Mr. or Mrs., while Negro witnesses were not given any courtesy title. A motion that witnesses of both races should be addressed in the same manner was also denied (R. 330); the question of deprivation of Fourteenth Amendment rights in this denial is before the court under Assignment of Error Number 6.

It is well-settled in the law that when public sentiment affects the fairness of a trial, due process has been denied *Moore* v. *Dempsey*, 261 U. S. 86. In the instant case, where witnesses and spectators were not treated equally, on the grounds of "custom" (R. 337, 338), it is clear that biased community sentiment pervaded the judicial proceedings.

The trial judge was a vigorous exponent of white supremacy; and completely committed to halting any inroads on segregation made by appellant (R. 228, 242, 247-249, 252, 258, 271). He had a particular bias against appellant, and had publicly in and out of court accused it of being Communist-dominated (R. 272). He furthermore had publicly proclaimed his own intentions toward appellant by announcing prior to trial that he would deal it a death-blow from which it would never recover (R. 274). He subsequently refused to recuse himself (R. 237) and rendered judgment against appellant in this case. Bias on the part of a trial judge has long been held to deny equal protection and due process. This question is before the court under Assignment of Error Number 7. *State ex rel. McFarren* v. *Justice Court*, 32 Wash. 2d 544, 202 P. 2d 927 (1949); *Ex Parte Wallace*, 24 Cal. App. 2d 933, 152 P. 2d 1 (1944); *Tumey* v. *Ohio*, 273 U. S. 510. The bias need not be pecuniary one, providing it is personal

and such as prevents the rendering of an impartial judgment. *Ex Parte Cornwell*, 144 Ala. 497, 39 So. 354 (1905). As was stated in *State ex rel. La Russa, et al.* v. *Hines*, 197 So. 762 (1940) at P. 763:

> The candidate for legislative or executive office is expected to announce his position on policies and issues and to stoutly advocate them but when a candidate for the judiciary does this, he disqualifies himself to sit in any cause affecting the issues he advocates.

The court particularly pointed out that prior to trial the judge had singled out the defendant and said he would convict him, and that it was contrary to reason to suppose the judge was unprejudiced under such circumstances.

Both the trial itself and the judgment entered lacked impartiality, and this denial of a fair hearing is a fundamental violation of the due process and equal protection clauses of the Fourteenth Amendment.

III

There is no state statute authorizing appellee to oust appellant from the state. Title 10, Sections 192, 193 and 194 Ala. Code, 1940, are mere venue and service of process provisions with respect to foreign corporations and can be made the basis for exclusion of a foreign corporation only if the provisions are found applicable to it and it continues to refuse to comply. *Pepperell Mfg. Co.* v. *Alabama National Bank*, 261 Ala. 665 (1954), *Gadden, Allen, Inc.* v. *Trans-Lux News Corp.*, 254 Ala. 665 (1930).

Presumably, equity would have the power to oust for illegal activities. However, the only possible illegal activity shown in this record would be the failure to register as a foreign corporation; this failure was the result of the good faith belief that the registration provisions applied

to business, not non-profit organizations. State officials did not know of any other non-profit foreign corporation which had been ousted because of failure to register (R. 693, 697, 700, 702, 704). The Court's ruling in refusing to permit this to be introduced into evidence was error and a denial of due process and equal protection as submitted under Assignment of Error Number 17. One non-profit corporation had been advised that Alabama law did not require such registration (R. 706-708). In spite of this, appellant had offered to register but this offer was refused. The judgment and decree in this case are contrary to the weight of the evidence, as was submitted under Assignment of Error Number 2. There is no basis in equity for an ouster under these facts.

Furthermore, the State is bound by the equitable rule regarding laches, since it is invoking the Court's equity jurisdiction.

In United States v. *Stinson*, 125 F. 907, 910 (7th Cir. 1903), affirmed 197 U. S. 200, the basic rule as to the application of equity to actions by the government was laid down.

> The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considerations underlying the doctrine of estoppel apply to government as well as to individuals.

The doctrine of laches in particular was involved in many cases. In *United States* v. *Property on Pinto Island*, 74 F. Supp. 92 (S. D. Ala. 1947), involved estoppel against the State of Alabama for waiting 41 years before asserting claim to title of lands. Other Alabama cases include *State ex rel. Roberson* v. *The Town of Pell City*, 157 Ala. 380, 47 So. 246 (1908), and *Powell* v. *City of Birmingham*, 258

Ala. 159, 167; 61 So. 2d 11, 18 (1952). See also *State* v. *Ward*, 133 So. 2d 383 (Ala., 1961).

The Court spelled out the reasoning in these laches cases in *Brown* v. *Tuskegee Light & Power Co.*, 232 Ala. 361, 367, 368, 168 So. 165 (1936).

> In effectuating this elemental principle denying relief in equity which is not equitable, our Court, in common with prevailing authorities generally, applies the doctrine of estoppel in pais even against the state or its governing subdivision.

The Court in *Daniell* v. *Sherrill*, 48 So. 2d 736 (Fla. 1950), 23 A. L. R. 2d 1410, held at p. 739:

> . . . The State is the moving party it invoked the jurisdiction of a court of equity. The Sovereign, in such a situation is bound by the maxim, 'He who seeks equity must do equity,' to the same extent that any citizen would be bound.

State of Iowa v. *Carr*, 191 F. 257, 266 (8th Cir., 1911) stressed also the State's obligation under the rules of equity when the State itself seeks equity.

> But the great weight of authority, the stronger reasons and the settled rule upon this subject in the courts of the United States, is that, while mere delay does not, either by limitation or laches, of itself constitute a bar to suits and claims of a state or of the United States, yet, when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances.

Brief Filed by Petitioner in the Supreme Court of Alabama

The judgment and decree in favor of appellee in this case are contrary to law, as was submitted in Assignment of Error Number 3.

In the instant case, N.A.A.C.P. Branches had been in operation in Alabama since 1918 (R. 675) and had been rendering legal assistance to Negroes who sought vindication of their constitutional rights in Alabama since 1932. Its Southeast Regional Office in Birmingham was opened in April, 1951, and operated openly and continuously since that time (R. 35). Attorneys engaged by appellant had represented Alabama Negroes in litigation defended by the State. At no time did the State give notice to appellant that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register with the Secretary of State (R. 676). The Attorney General had recently been in correspondence with appellant and at no time called upon appellant to register (R. 676). The Court erred in denying the appellant's motion to dismiss, as was submitted in Assignment of Error Number 8.

Clearly, the facts of this case show that equity proceedings were unwarranted and were furthermore barred by laches. The judgment was therefore contrary to the evidence and in violation of the principles of equity and the case law. *Brown* v. *Tuskegee Power & Light Co. supra; United States* v. *Stinson, supra.* This question is before the court under Assignment of Error Number 4.

IV

A state has no absolute power to exclude a foreign corporation. *Southern Railway* v. *Greene*, 216 U. S. 400; *Freeman* v. *Hewitt*, 329 U. S. 249; *Simonetti Bros. Produce Co.* v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38 (1940).

The theory of the power of exclusion originated in colonial times, when corporations were predominantly expansive trading companies, identified with the grant of

special privilege; monopoly, not legal personality, was their distinguishing feature. The thought and language of the monopoly period persisted in the early nineteenth century, and incorporation by special act of the legislature continued to be the practice. Changes brought about by an extraordinary increase of corporate activity, however, weighed heavily against the restrictive theory, and in 1809 recognition of rights of corporations to sue in courts of states other than the state of incorporation destroyed a first principle of restrictivism, the non-recognition of artificial personalities created by foreign sovereigns. *Bank of United States* v. *Deveraux*, 9 U. S. (5 Cranch.) 37 (1809). Today, incorporation has ceased to be a matter of special legislative grant, and it would now appear to be a denial of full faith and credit to the statute of a sister state to allow only domestic corporations to carry on a legal business. 89 Penna. Law Review 453, 454 (1941).

A series of cases struck down the theory of absolute right to exclude a corporation whose origin is in another state. *Freeman* v. *Hewitt*, 329 U. S. 249; *Butler Bros. Shoe Co.* v. *U. S. Rubber Co.*, 156 F. 1 (C. A. 8, 1907); *Crutcher* v. *Kentucky*, 141 U. S. 47. As was stated *in Crutcher*, referring to state regulations burdening interstate commerce, a corporation's right to operate interstate was one granted to every citizen of the United States, and incorporating within a state is a mere convenience of which the state cannot unreasonably deprive it.

It was held in *Terral* v. *Burke Construction Co.*, 257 U. S. 529: "... the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the Supreme fundamental law." Therefore, the order and judgment of the Court restraining and enjoining appellant from operating or soliciting membership and contributions, and from filing to qualify to do business, are violative of the

First and Fourteenth Amendments, as submitted under Assignment of Error Number 12.

Other cases have developed the theory of exclusion as a deprivation of equal protection of the laws. In *Western Union Telegraph Co.* v. *Kansas ex rel. Coleman*, 216 U. S. 1, the Court emphasized that the organization involved was a public service corporation, and that the state could not require it to take out a license for carrying on its interstate operations. In *Southern Railway* v. *Greene*, 216 U. S. 400, the Court held that a corporation was a person within the equal protection clause of the Fourteenth Amendment, and that if the corporation has come into the state and acquired property, it must be treated equally with other corporations. The case of *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494, did not involve interstate commerce, nor a corporation having permanent and valuable property in the state; the Court held that since the corporation had built up good will and extensive records in the course of its business, it was a denial of equal protection to exclude it. The failure to enter judgment in appellant's favor, dismiss the complaint and allow appellant to register, is a denial of Fourteenth Amendment rights, as submitted under Assignment of Errors Number 22.

It is also a denial of equal protection to subject a foreign corporation to unconstitutional conditions in order to operate in the state. The state may not ask a corporation to give up its constitutional rights. *Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Pullman Co.* v. *Kansas ex rel. Coleman*, 216 U. S. 56; *People ex rel. Hakanson* v. *Palmer*, 367 Ill. 513, 11 N. E. 2d 931 (1937); *Herndon* v. *Chicago, Rock Island and Pacific Ry. Co.*, 218 U. S. 135; *Harrison* v. *St. Louis & San Francisco Ry. Co.*, 232 U. S. 319; *Donald* v. *Phila. & Reading Coal & Iron Co.*, 241 U. S. 329.

Exclusion of a foreign corporation involves not only the equal protection clause but the due process clause as well.

Brief Filed by Petitioner in the Supreme Court of Alabama

A corporation is now a person under the Fourteenth Amendment and entitled to due process of law. *Gulf, Colorado and Sante Fe R. R. Co.* v. *Ellis*, 165 U. S. 150, 154; *Liggett* v. *Baldridge*, 278 U. S. 105. The corporation would therefore be protected from any arbitrary state action and could not be punished under the state's power if the exercise of this power has no real and substantial relation to its supposed goal. *Liggett* v. *Baldridge*, supra. The failure to dismiss the restraining order in the instant case denied substantive due process, as was submitted under Assignment of Error Number 1.

The Court in *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, said at p. 513:

> . . . A state may not, under guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupation or impose unreasonable and unnecessary restrictions upon them. *Lawton* v. *Steele*, 152 U. S. 133, 137; *Meyer* v. *Nebraska*, 262 U. S. 390, 399.

The Court's decree enjoining appellant from filing to qualify to do business denies First and Fourteenth Amendment rights, as submitted under Assignment of Error Number 13.

Just as a natural person may not be prevented from pursuing a lawful occupation, *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, so a corporation may not be prevented from engaging in lawful occupation. *New State Ice Co.* v. *Liebmann*, 285 U. S. 262. Arbitrary expulsion from the state would violate the due process clause. The decree of ouster in this case was violative of the Fourteenth Amendment, as submitted under Assignment of Error Number 15.

The doctrine of exclusion was not applied to non-profit corporations, even before it became subject to legal limi-

tations. It arose because of the profit-making activities of commercial corporations, competing against domestic corporations. There can be on doubt that Alabama recognizes the difference between profit and non-profit corporations, since in regard to domestic corporations, non-profit corporations are treated under entirely different legal provisions (Alabama Non-Profit Corporations Act, Title 10, Sections 203-263, Ala. Code, 1940, as amended 1955) than profit or business corporations (Title 10, Sections 1-110, Ala. Code, 1940). Yet the state has attempted to subject appellant to the rules regarding foreign business corporations instead of granting it the same treatment as other non-profit foreign corporations (R. 706-708), and has attempted to oust it from the state. There was no adequate foundation in law or in fact for such a denial of due process, as submitted under Assignment of Error Number 19.

There was no evidence in the record of any illegality on appellant's part. The judgment of ouster under such circumstances was, as submitted under Assignment of Error Number 21, so harsh as to deny due process. The state read a number of telephone numbers called by a witness into the record without any adequate foundation (R. 1044-1047); the question of violation of privacy and First and Fourteenth Amendment rights involved in this is before the Court under Assignment of Error Number 18. The evidence in this case shows that the only action of appellant which was subject to question was its failure to register, which was in good faith (R. 162-1038; 1041-1043); the judgment was therefore contrary to the great preponderance of the evidence in the case, as submitted under Assignment of Error Number 14. In view of the fact that no other non-profit corporations had been so treated for mere failure to register, to the knowledge of state officials (R. 693, 697, 700, 702, 704), shows clearly that the judg-

ment is contrary to the overwhelming weight of the evidence and therefore a denial of Fourteenth Amendment rights. This question is before the Court under Assignment of Error Number 20.

V.

The evidence discloses that these proceedings are singular in that there is no showing that such proceedings had been taken against any similar foreign corporation since 1918. It is clear from the manner in which these proceedings were instituted, without notice to appellant, that state officials were attempting to misuse the law to oust appellant from the state purely because appellant's aims and objectives are at variance with views held by state officials. The question of denial of Fourteenth Amendment rights here involved is before the Court under Assignment of Error Number 10. As pointed out in Proposition Number 1, ante, racial discrimination of any kind is unlawful when imposed and enforced by governmental authorities whether in schools, *Brown* v. *Board of Education*, supra; recreational facilities, *Dawson* v. *Mayor*, supra; in public parks, *Holmes* v. *City of Atlanta*, supra; in intrastate commerce, *Gayle* v. *Browder*, supra; in interstate commerce, *Bailey* v. *Patterson*, supra; and in any and all kinds of public facilities.

The courts have consistently struck down state regulations and actions which in purpose and effect seek to impose discrimination. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Oyama* v. *California*, 332 U. S. 633; *Takahashi* v. *Fish & Game Commission*, 334 U. S. 410.

It is also clear that the state may not impose restrictions upon persons to prevent their advocating by lawful means the elimination of racial discrimination and segregation. *N.A.A.C.P.* v. *Alabama*, supra. What the state is here attempting to do is to prevent the appellant, and those who

work in concert with it, from taking lawful action in opposition to illegal state policy which seeks to perpetuate an unconstitutional pattern of segregation and discrimination, as submitted under Assignment of Error Number 16. In short, the state is using these proceedings to accomplish racial discrimination forbidden by the Fourteenth Amendment, and the judgment herein, in effect, constitutes a forbidden discrimination in violation of the Constitution of the United States. Cf. *Gomillion v. Lightfoot*, supra.

Under these circumstances, denial of appellant's motion for a rehearing was error, as submitted under Assignment of Error Number 23, and a deprivation of due process as guaranteed under the Fourteenth Amendment.

CONCLUSION

In conclusion, it is therefore most earnestly urged by Counsel for Appellant that in the light of the decisions above cited, and manifest error of the lower Court, this Court will reverse the case with such direction as justice and law may require.

APPENDIX C

Decree of Circuit Court of Montgomery, Alabama, December 29, 1961

This matter now comes on to be heard for final decree before the Court and is submitted by the respective parties upon the pleadings and proof as noted by the Register, and upon the note of submission filed this day.

The Court has heard this case in open Court for three days, Wednesday, December 27th, Thursday, December 28th and Friday, December 29th. During this time twenty witnesses for the respective parties have been examined orally before the Court. The examination and cross-examination of these witnesses has been careful and thorough.

Upon completion of the testimony, the Court did not fix any time limit for the argument and the case has this day been argued before the Court by counsel for the respective sides for several hours.

Now, upon consideration of only such testimony as is relevant, material, competent and legal to the issues presented by the pleadings in this case, the Court is of opinion that the allegations of complainant's bill, as last amended, have been proved by the overwhelming weight of the testimony; and the Court finds from this evidence, much of it admissions by the respondent itself, that the respondent has been and continues to do business in the State of Alabama in violation of the Constitution and laws of the state relating to foreign corporations and the Court is of the opinion, without going into detail at this time, that the allegations of the complainant's bill, as last amended, have been overwhelmingly proved by all of the credible testimony in the case.

The Court further finds from the evidence that said respondent's activities in this state have also been in violation of other laws of the State of Alabama and are and have been a usurpation and abuse of its corporate functions and detrimental to the State of Alabama; and now, upon consideration of the record in this case, including all of

the pleadings and all of the testimony taken orally before the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, National Association for the Advancement of Colored People, a corporation, be, and they hereby are, permanently restrained and enjoined from:

1. Conducting any further business of any description or kind of respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any office of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

It is, further ORDERED, ADJUDGED AND DECREED by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents,

servants, employees, attorneys, and all officers thereof, and all persons in active concert or participation with the respondent, be and they hereby are permanently restrained and enjoined as to intra-state activities and business of this kind only, and is hereby ousted from organizing or controlling branches of respondent in this state, and from exercising any of its corporate functions in the State of Alabama, except such as may be protected by the Interstate Commerce Clause of the Constitution of the United States.

The Court, in view of the above ruling, is of opinion that it is not necessary that the temporary injunction issued June 1, 1956 be continued in force and effect, and the same is hereby dissolved as of this date.

The Court notes that the United States Court of Appeals for the Fifth Circuit did on December 11th, 1961, in compliance with the mandate of the United States Supreme Court, remand the proceedings in the case of the National Association for the Advancement of Colored People, appellant, versus MacDonald Gallion, Attorney General of the State of Alabama, et al., appellee, to the United States District Court with directions to proceed with the trial of the issues in the action unless within a reasonable time, not later than January 2nd, 1962, the State of Alabama shall have accorded to the National Association for the Advancement of Colored People, a corporation, an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956 and upon the merits of the action in which such order was issued. Without this directive of the Supreme Court of the United States, a ruling which lacks that comity usually existing between state and federal courts, this Court would now go into a full discussion of all the issues involved in this case. This directive of the United States Supreme Court

prevents this State Court at this time from writing a full opinion in the case; and this Court does now reserve the right at a future date to state in an opinion its full and complete findings of fact and its rulings on the law in this case, with appropriate citations of authorities. It is,

ORDERED, ADJUDGED AND DECREED further by the Court that the costs in this cause, to be taxed by the Register of this Court, be paid by the respondent, for which let execution issue.

DONE, this the 29th day of December, 1961.

WALTER B. JONES.

APPENDIX D

Motion for Hearing on the Merits in the United States District Court for the Middle District of Alabama Northern Division

Now comes your petitioner, the National Association for the Advancement of Colored People, plaintiff in the above-entitled cause, and respectfully moves this Court to set this cause down for a hearing on the merits.

1. On November 29, 1962, plaintiff herein filed a Motion for Hearing on the Merits on the grounds that no hearing had been set in the Supreme Court of Alabama. Prior to the hearing on that motion, plaintiff was notified that a hearing had been set in the Supreme Court of Alabama. Petitioner then asked that its motion be withdrawn without prejudice.

2. On or about December 18, 1962, plaintiff argued the appeal from the judgment of the Circuit Court of Montgomery County before the Supreme Court of Alabama. Its brief had been filed in the Supreme Court of Alabama in April of 1962, and was filed in accordance with the Revised Rules of the Supreme Court of Alabama, 1955, Rule 9, which reads as follows:

> Rule 9. (10). Appellant's Brief: How Prepared:
>
> Appellant's brief under separate headings shall contain: (a) under the heading "Statement of the Case," a concise statement of so much of the record as fully presents every error and exception relied upon referring to the pages of the transcript; (b) under the heading "Statement of the Facts," a condensed recital of the evidence in narrative form so as to present the substance clearly and concisely, referring to the pages of the transcript, and if the insufficiency of the evidence to sustain the verdict or finding, in fact or law, is assigned, then the statement shall contain a condensed recital of the evi-

dence given by each witness in narrative form bearing on the points in issue so as to fully present the substance of the testimony of the witness clearly and concisely; (c) under the heading "Propositions of Law," a concise statement, without argument, of each rule or proposition of law relied upon to sustain the errors assigned, together with the authorities relied upon in support of each, and in citing cases, the names of parties must be given, with the book and page where reported; (d) argument with respect to errors assigned which counsel desire to insist upon. Assignments of error not substantially argued in brief will be deemed waived and will not be considered by the court. The statements made by appellant under the headings "Statement of the Case" and "Statement of the Facts" will be taken to be accurate and sufficient for decision, unless the opposite party in his brief shall make the necessary corrections or additions.

The transcript of the record and the Assignment of Errors were also filed in accordance with the rules of that court.

3. At no time, prior to or during the hearing before the Supreme Court of Alabama, was there any statement from the court or counsel that the brief or appeal was jurisdictionally defective.

4. On February 28, 1963, the Supreme Court of Alabama rendered a decision[1] affirming the judgment below on procedural grounds without reaching the merits. Its basic rationalization for this course is that plaintiff failed to properly argue its Assignments of Error.

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[1] Attached hereto as the Appendix.

Motion for Hearing on the Merits in the United States District Court for the Middle District of Alabama Northern Division

5. In view of the mandate of the Supreme Court of the United States on October 23, 1961, "to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued" and "authorization to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action," plaintiff respectfully submits that this Court is now obligated to take jurisdiction of this matter and render a decision on the merits. The decision of the Supreme Court of Alabama is in complete defiance of the conditions set by the Supreme Court of the United States for withholding jurisdiction of the federal courts.

WHEREFORE, it is respectfully urged and moved that this Court take jurisdiction of this cause and set this matter down for an early hearing and proceed to decide this case on the merits.

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Attorneys for Plaintiff.
By .....

Dated: April 1, 1963.

APPENDIX E

Denial of Motion for Hearing on Merits

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
Northern Division
April 30, 1963

There is now presented to this Court a motion of the plaintiff, National Association for the Advancement of Colored People, a Corporation, filed herein on March 29, 1963, wherein said plaintiff seeks to have this Court set this matter for a hearing on the merits.

This case has been pending in this Court since June 23, 1960. It is an action by the National Association for the Advancement of Colored People seeking to invoke the jurisdiction of this Court on the ground that the plaintiff corporation has a right in this Court to redress certain alleged deprivations under color of law of the State of Alabama of the right and privilege secured to said corporation and/or its members by the Constitution of the United States and/or Acts of Congress providing for the equal rights of citizens. Plaintiff seeks, in its action, to have this Court enjoin and restrain the defendant Richmond M. Flowers as Attorney General of the State of Alabama and his agents, etc., and enjoin and restrain Agnes Baggett as Secretary of State of the State of Alabama and her agents, etc., from refusing to register the plaintiff corporation, said refusal action being pursuant to a temporary injunction which was issued by one of the Circuit Judges of the Fifteenth Judicial Circuit for the State of Alabama.[1]

[1] The case was originally against MacDonald Gallion as Attorney General and Mrs. Bettye Frink as Secretary of State. This Court, acting pursuant to the provisions of Rule 25(d), Federal Rules of Civil Procedure, by order made and entered herein on April 5, 1963, substituted Flowers and Baggett, the present incumbents of the offices as designated, for those individuals originally named as defendants in their official capacities.

Denial of Motion for Hearing on Merits

On August 11, 1960, this Court by memorandum opinion, 190 F. Supp. 583, set out in detail the history of this litigation in both the State and Federal courts and declined to exercise jurisdiction in this case, observing that because of the peculiar history of this case the matter should be litigated through the State court system and, if necessary, from there to the Supreme Court of the United States. From this action, the National Association for the Advancement of Colored People a Corporation, appealed to the United States Court of Appeals for the Fifth Circuit. That Court in *National Association for the Advancement of Colored People* v. *Gallion* (1961), 290 F. 2d 337, vacated the order of this Court to the extent that the action was dismissed, but stated:

> "We are in agreement with the district court's decision that this matter should be litigated initially in the courts of the State. But for the reasons here set forth, the judgment will be vacated and the case remanded to the district court with instructions to permit the issues presented to be determined with expedition in the State courts, retaining jurisdiction meanwhile for the purposes here stated."

From the action of the United States Court of Appeals for the Fifth Circuit, the National Association for the Advancement of Colored People, a Corporation, appealed to the Supreme Court of the United States. That Court in *National Association for the Advancement of Colored People* v. *Gallion, Attorney General of Alabama, et al.* (Oct. 23, 1961), 368 U. S. 16, vacated the action of the Court of Appeals for the Fifth Circuit and remanded the matter to said Court, stating:

> "The petition for a writ of certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions

Denial of Motion for Hearing on Merits

to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. *Truax* v. *Corrigan*, 257 U. S. 312, 331-334."

On December 13, 1961, this Court, acting pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit that was filed herein on December 11, 1961 (which mandate was, in accordance with the order and instructions of the Supreme Court of the United States, supra), ordered this cause to be reinstated on the active docket of this Court "for such further action as may be considered appropriate and necessary to assure prompt disposition of all issues involved in this case." This Court, in order to keep informed as to the exact status of the matter in the courts of the State of Alabama, ordered and directed that the plaintiff and the defendants each advise this Court in writing on or before the 30th day of each month, commencing January 30, 1962, as to the exact status of said proceeding in the State courts. That part of this Court's order has been complied with by the parties, and the said status reports are on file in this action with the Clerk of this Court. Acting within the time prescribed and as required by the Federal courts, the Circuit Court of Montgomery County, Alabama, for three days, on December 27th, 28th and 29th, 1961, heard the matter on its merits.

Denial of Motion for Hearing on Merits

A final decree was rendered by the Circuit Court of Montgomery County, Alabama, in said cause on December 29, 1961, said decree being adverse to the National Association for the Advancement of Colored People, a Corporation, to the extent that said corporation, "its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, National Association for the Advancement of Colored People, a corporation, be, and they hereby are, permanently restrained and enjoined" from conducting business of any description, maintaining any office, soliciting membership, collecting dues or contributions, and filing an application "for the purpose of qualifying to do business within the State of Alabama."

The National Association for the Advancement of Colored People, a Corporation, duly and timely appealed to the Supreme Court of Alabama from the action of the Circuit Court of Montgomery County, Alabama. The records of this Court reflect that the case as appealed was submitted to the Supreme Court of Alabama at the first regular call of the Third Division (the division that includes Montgomery County), this submission being in December 1962 and this call for this division by the Supreme Court of Alabama being fixed by law and being the first call for the Third Division after the briefs were filed.[2]

On February 28, 1963, in *National Association for the Advancement of Colored People, a Corporation*, v. *State of Alabama*, 3 Div. 996, — Ala. —, 150 So. 2d 677, the Supreme Court of Alabama rendered its decision wherein it "affirmed" the decree of the Circuit Court of Montgomery County, Alabama, permanently enjoining and restraining said association from conducting business in the State of Alabama. The basis for the motion for a hearing on the merits now presented to this Court is that ". . .

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[2] Title 13, § 22, Code of Alabama, Recompiled 1958.

this Court is now obligated to take jurisdiction of this matter and render a decision on the merits," since the Supreme Court for the State of Alabama, instead of considering the merits of the case, affirmed the action of the Circuit Court of Montgomery County, Alabama, for the failure of the National Association for the Advancement of Colored People, a Corporation, to comply with Alabama Supreme Court Rule No. 9. This rule has to do with the assignment of error and the arguments of said assignments in the brief as presented to the Supreme Court. As this Court understands the matter, there is no contention on the part of the plaintiff association that the courts for the State of Alabama have not expeditiously handled the case since the action of the Federal appellate courts and the order of this Court of December 13, 1961. In this connection, it is significant to note that the plaintiff association did not, as authorized by Rule 47, as amended, Supreme Court of Alabama (263 Ala. XXII), request the Supreme Court of Alabama to expedite the submission of the case while the appeal from the Circuit Court of Montgomery County, Alabama, was pending before the Supreme Court. What the plaintiff association is now saying and the basis on which it seeks to have this Court grant a hearing on the merits of the matter is that "[t]he trivialities raised by the Supreme Court of Alabama to bar dealing with this case on the merits and its refusal to follow precedents in its own law is, in view of the long protracted nature of this litigation, a clear denial of due process."

As this Court understands the Supreme Court of the United States in its order and directive as set out in *National Association for the Advancement of Colored People v. Gallion, etc., et al., supra*, this Court was to proceed with the trial of the issues ". . . unless within a reasonable time . . . the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order . . ." The Supreme Court

further stated that "[p]ending the final determination of all proceedings in the state action . . ." this Court was authorized to retain jurisdiction and to take such steps as were necessary and appropriate to assure a prompt disposition in the State court action; that has been and continues to be done. As this Court understands the matter, the Supreme Court of the United States and the Fifth Circuit in its mandate made and entered herein on December 11, 1961, have not ordered and directed this Court to grant the National Association for the Advancement of Colored People, a Corporation, a hearing on the merits if and when it received an adverse ruling in the State courts. The Supreme Court of the United States has, in the exercise of its jurisdiction over the Supreme Court of the State of Alabama, been available to the National Association for the Advancement of Colored People, a Corporation, regularly during the history of this litigation.[3] The plaintiff association, as it has had throughout the course of this litigation in both Federal and State courts, continues to have the right to obtain rulings and reviews from the Supreme Court of the United States of decisions relating to the constitutional issues presented in this litigation. To put it as succinctly as possible, this Court does not now feel that the action of the Supreme Court of Alabama in its ruling affirming the granting of the injunction by the Circuit Court of Montgomery County, Alabama, said ruling being based upon noncompliance by the plaintiff association with the rules of that Court, requires or even justifies this Court's granting the plaintiff association a hearing on the merits of this matter. Such action by this Court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff

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[3] *National Association for the Advancement of Colored People* v. *Alabama* (1958), 357 U. S. 449; *National Association for the Advancement of Colored People* v. *Alabama*, 360 U. S. 240.

says was a "clear denial of due process." The Supreme Court of the United States is the proper Court to review this action by the Supreme Court of Alabama. This Court is informed that such a review is presently being sought by the plaintiff association.

For the foregoing reasons and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the National Association for the Advancement of Colored People, a Corporation, filed herein on March 29, 1963, seeking to have this Court conduct a hearing on the merits of this matter, be and the same is hereby denied.

Done, this the 30th day of April, 1963.

FRANK M. JOHNSON, JR.,
United States District Judge.